



**Airports Economic Regulatory Authority of India**

**In the matter of Determination of tariffs for  
Aeronautical Services in respect of Bengaluru  
International Airport, Bengaluru, for the first Control  
Period (01.04.2011 to 31.03.2016)**

**New Delhi: 26<sup>th</sup> June 2013**

**AERA Building  
Administrative Complex  
Safdarjung Airport  
New Delhi - 110 003**

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## **1 Brief on Bangalore International Airport Limited (BIAL)**

1.1 Earlier, Airports in India were developed, owned and managed by Airports Authority of India (AAI). To keep with anticipated air traffic growth, Government of India (GoI) initiated the process of upgrading the existing airports in the country through AAI and also encouraged the setting up of Greenfield airports through private sector participation (PSP) allowing, inter alia, carrying out airport related activities through Public-Private Partnership (PPP) model, except for certain reserved activities such as Air Traffic Control, Security, Customs etc. To address this issue, amendments were proposed to the Airports Authority of India Act, 1994 (AAI Act). The amendments proposed were introduced in April - May 2003 session of the Parliament. The Amendment Bill was passed by Lok Sabha on 9<sup>th</sup> May 2003 and subsequently by Rajya Sabha on 28<sup>th</sup> July 2003. A formal notification of the amended Act was issued on 1<sup>st</sup> July 2004.

1.2 The GoI also announced several fiscal incentives and concessions such as the availability of land from respective State Governments, financial assistance by way of equity/ interest free loans etc.

1.3 GoI in the Ministry of Civil Aviation (MoCA) had approved, in the year 1994, the proposal to establish a new airport of international standard at a site near Devanahalli, Bangalore, by bringing in funds from the private sector to handle both passenger and cargo, domestic and international traffic to meet the growing demand of the Bangalore City. Several discussions were held among the representatives of GoI in the Ministries of Civil Aviation, Defence, Law & Justice, the AAI, the Director General of Civil Aviation (DGCA) and others to finalize various aspects relating to the establishment of the project.

1.4 A meeting was held at New Delhi on 15<sup>th</sup> April, 1999 under the Chairmanship of the Secretary, MoCA, GoI, in which the following decisions on the basic parameters of the project were taken:

1.4.1 Location of the airport: It was agreed that the new Bangalore International Airport shall be located in the site identified by the Ramanathan Committee, south of Devanahalli, based on Integrated Airspace Management subject to the usual clearances such as local (municipal) authorities, Environment Ministry, Defence Ministry and other concerned agencies.

1.4.2 Land: Government of Karnataka (GoK) informed that State Government has earmarked 3500 acres (approx.) of land for the development of Devanahalli airport.

1.5 Project format: It was agreed that the project will be implemented by a joint venture company in which AAI and GoK or its agency will have equity stake of 13% each and the strategic private partners will hold balance equity upto 74%. It was also decided that the equity holding of AAI and GoK may vary but total equity holding by both of them together will be 26%.

1.5.1 Aeronautical charges: It was agreed that the new airport will fix aeronautical charges based on the principle of cost recovery in accordance with the guidelines of ICAO subject to approval of the competent Authority.

1.5.2 Future role of HAL airport: It was agreed that the existing HAL airport could continue to be available to smaller aircrafts (upto 52 seater capacity) for short haul operations, training, emergency and VIP flights. However, the representatives of GoK reiterated their earlier request of excluding the State capitals and international airports from the purview of the services to be operated from the HAL airport.

1.5.3 Landing rights for international airlines (bi-lateral): It was agreed that the bi-lateral rights would continue to be retained by the Central Government. However, the proposed new airport will not be discriminated against.

1.5.4 General issues:

1.5.4.1 Since airport is a central subject, it was decided that the legal position with respect to establishment of the above airport as a civilian commercial joint/private sector airport shall be examined and steps shall be taken to bring in necessary amendments in the AAI Act / Aircraft Act, 1934 to facilitate the establishment of the above Airport, if required. Further, legal position with respect to participation by AAI in the equity capital of the joint venture company to be set up for the establishment of the above Airport project shall also be examined and necessary amendments shall be brought in the AAI Act in this regard as well, if required.

1.5.4.2 It was also decided that AAI and Karnataka State Industrial and Investment Development Corporation (KSIIDC) shall enter into necessary Memorandum of Understanding/joint venture agreement laying down the roles and responsibilities of the two agencies in taking further effective steps towards expeditious implementation of the project.

1.5.4.3 The representatives of GoK requested that all the above mentioned decisions be communicated in writing by the MoCA to enable GoK to initiate further necessary action on the project.

1.6 As decided in the above meeting, a Memorandum of Understanding (MoU) was signed between AAI and KSIIDC on 3<sup>rd</sup> May 1999 to facilitate further action leading to early commencement of the implementation of the project based on the decisions taken in the above meeting. As envisaged in the MoU, a Steering Committee comprising of two representatives each of GoI (two Joint Secretaries of MoCA), AAI (Member - Planning and Member - Finance), GoK (Principal Secretary, C&I and Secretary - Finance) and KSIIDC (Managing Director and former Chairman of HAL as an external expert) was constituted to oversee the entire tendering process. Based on the approval of the Steering Committee, KSIIDC appointed IL&FS as the Project Advisors and Dua

Associates as the Legal Advisors.

1.7 The Steering Committee decided to follow a three stage bidding process comprising of Expression of Interest (RFQ) in Stage-1, submission of concept master plan called Airport Development Plan in Stage-2 and Request for Proposal (RFP) in Stage-3.

1.8 Advertisements soliciting EoI from interested parties were released in national and international newspapers in June 1999. Seventeen firms/consortia submitted EoI during August 1999. The EoIs were evaluated on the basis of financial and experience criteria. Seven consortia were found to satisfy these criteria and these seven firms/consortia were shortlisted and taken to the next stage of the bidding process. A Project Information Memorandum (PIM) containing the project background, broad technical specifications and traffic assessment was issued to the shortlisted parties in September 1999. In the pre-RFP meeting held on 10th September 1999, all the seven pre-qualified bidders expressed serious concern and apprehensions on keeping the HAL Airport open for commercial operations after the new Airport becomes operational even for smaller aircrafts for short haul flights. Keeping in view the viability of the new airport, the bidders insisted on clarity and pre-confirmation regarding the following fundamental issues before proceeding with the next phase of bidding:

1.8.1 in-principle commitment to declare the new airport at Devanahalli as an international airport;

1.8.2 in-principle approval to close the existing HAL airport for commercial operations once the new facility is commissioned/ made operational;

1.8.3 the existing airport also declared as international airport;

1.8.4 assurance on providing infrastructural facilities viz. Land, water, power, roads, etc up to the battery limits.

1.9 Considering the serious concern and apprehensions expressed by the bidders, the Steering Committee recommended to GoI for consideration and approval of complete closure of civilian commercial operations from the existing HAL Airport, after commencement of the operations by the new Airport at Devanahalli. MoCA, GoI vide letter No.AV.20014/2/90-VB dated 23-3-2000 communicated the following approvals to the State Government:

1.9.1 Declaring the existing airport at Bangalore as an International Airport, with the understanding that this did not involve any substantial investment of public resources;

1.9.2 This status of International Airport would be transferred /granted to the new airport proposed to be developed with private sector participation at Bangalore, on its commissioning, in case it enjoys all the necessary infrastructure facilities required for an international airport and the existing airport at Bangalore then closed for civilian operations.

1.10 The bidders also requested that an independent traffic study be commissioned, to enable a common traffic forecast for use by the bidders in their development plans. KSIIDC commissioned an independent traffic study to SH&E of London, a reputed firm of airport consultants.

1.11 The GoK also issued an Order in March 2000 on the provision of peripheral infrastructure for the Airport. The RFP document was finally issued on 20<sup>th</sup> March 2000 and the SH&E study report was sent to the bidders a few days after the RFP, during April 2000. The seven shortlisted bidders were then asked to submit the Master Plan/Airport Development Plan (ADP) by 30<sup>th</sup> June 2000. The following two bidders responded with submission of ADP within the stipulated time:

1.11.1 Consortium led by Hochtief Airport, GmbH, Germany; and

1.11.2 Consortium led by Siemens Project Ventures, Germany.

1.12 The ADPs submitted by the two bidders were evaluated by an Expert Committee. Based on the evaluation report, the Steering Committee approved both the Bidders being nominated as 'Preferred Bidders' under the RFP. Both the bidders had requested explicit viability support commitments from the GoK before they were ready to invest more resources into the final stage of the procurement process. On 18<sup>th</sup> September 2000, letters were issued to both the bidders to participate in the next stage of the RFP. The Bidders pressed for clarity on government support. To give additional comfort to the bidders, GoK assured them of the financial support of the Government.

1.13 Both the bidders viz. Siemens and Hochtief consortia submitted final project proposals on 30<sup>th</sup> April 2001 as stipulated. An Evaluation Committee consisting of eminent external professionals with deep knowledge and familiarity with subjects relating to infrastructure development, airports, business plans and commercial issues was constituted to appraise the proposals received.

1.14 In their over-all assessment of the two proposals, the Evaluation Committee opined that the project approach and methodology of Siemens brings the airport to fruition in a shorter time frame and a lower cost than the Hochtief proposal. The Siemens master plan provides for significantly increased capacity throughout the airfield and terminal area in the long run, and offers more flexibility in development modifications after the first phase should a need arise.

1.15 On the basis of the evaluation by the Committee, in June 2001, GoK approved acceptance of Siemens proposal and constituted a Negotiation Team to further discuss the project proposal in detail, optimize the project cost, minimize the State Financial Support and finalise the Shareholders Agreement and the Airport Development Agreement.

1.16 After several round of discussions and negotiations between the Siemens Consortium and the Negotiation Team, the Shareholders' Agreement (SHA) between AAI, KSIIDC, Siemens Project Ventures GmbH, Flughafen Zuerich AG (Unique Zurich), Larsen & Toubro Limited (L&T) and KSIIDC was signed on 23<sup>rd</sup> January 2002. Following the execution of the SHA, the management of the special



purpose vehicle – Bangalore International Airport Limited (BIAL) which was incorporated by GoK was handed over to private promoters.

1.17 The Greenfield airport at Devanahalli near Bengaluru has been implemented on a Build Own Operate and Transfer (BOOT) model under Public Private Participation (PPP) basis. GoK through KSIIDC and AAI together hold 26% equity and the strategic joint venture partners hold the balance 74%.

1.18 BIAL was incorporated with limited liability under the Indian Companies Act, 1956, with the participation of KSIIDC, the AAI, Siemens Project Ventures GmbH (Siemens), Unique Zurich and L&T, each of whom have agreed to participate as a shareholder in BIAL, for the development, design, financing, construction, completion, maintenance, operation and management of a greenfield airport at Devanahalli, near Bangalore in the State of Karnataka.

1.19 The Working Group constituted by the Prime Minister Office (PMO) comprising of representatives from the MoCA, Ministry of Finance, Ministry of Law and GoK finalized the draft Concession Agreement (CA), which was approved by the Cabinet in January 2004/June 2004. The approved version of the CA was executed between GoI and BIAL on 5<sup>th</sup> July 2004. The CA defines the terms and conditions under which BIAL, as a private company, is entitled to build and run the airport. As per the CA, the parties recognize and acknowledge that in matters of airport infrastructure and civil aviation, GoI has and must continue to have a major role and responsibility in determining the framework for the aviation sector. Further, the CA sets out the terms and conditions upon which the project, undertaken through a public/private sector approach, is to be implemented. The term of the concession is for a period of 30 years from the Airport Opening date i.e., 24<sup>th</sup> May, 2008, extendable by a further period of 30 years at BIAL's option. As per the CA, the activities of customs, immigration, quarantine, security and meteorological service will be performed by the relevant Government Agencies at the Airport and the communication, navigation & surveillance and air traffic management will be performed by AAI. BIAL shall, in consideration for the grant of Concession by GoI, pay to GoI a fee amounting to four per cent (4%) of gross revenue annually.

1.20 The GoK extended Rs. 350 crores as State support for which a State Support Agreement (SSA) was executed by GoK with BIAL. Further, GoK has also provided 4008 acres of land (approximately having the value of Rs. 175 crores) on concessional rent and a Land Lease Agreement (LLA) was also executed in this regard. The State Support Agreement (SSA) between GoK and BIAL and LLA between KSIIDC and BIAL were concluded on 20<sup>th</sup> December 2004. The CA, SSA and LLA paved the way for BIAL to achieve Financial Close by June 2005 and the construction work commenced thereafter.

1.21 At the time of Financial close and commencement of construction, the Initial Phase of the

Bengaluru International Airport was designed for handling about 4.5 million passengers per annum and the project cost was Rs. 1411.79 crore. However, owing to significant increase in aviation traffic, BIAL redesigned the initial phase midway through the implementation of the project, increasing the capacity of the Airport to 11.4 million passengers per annum and the project cost to Rs. 1930.29 crore, so that the Airport, at the Airport Opening Date (AOD), had the requisite capacity to handle the aviation traffic at the required/ prescribed service levels. Since additional equity contribution from GoK and AAI would have involved considerable delay, the entire additional cost was met by increase in debt from lenders. Subsequently, certain project extension works were taken up with supplemental expenditure budget of Rs. 540 crores (which was funded partly by raising additional equity from the shareholders and partly by further additional debt from lenders) taking the total project cost to Rs. 2470.29 crores.

1.22 The airport commenced the operations in May 2008. Some of the important milestones achieved in the development of the Project are as under:

**Table 1: List of Key dates in formation of BIAL**

MoU between AAI and KSIIDC	3 <sup>rd</sup> May 1999
Shareholders' Agreement	23 <sup>rd</sup> Jan 2002
Concession Agreement with Gol	5 <sup>th</sup> Jul 2004
State Support Agreement with GoK	20 <sup>th</sup> Jan 2005
Land Lease Agreement with KSIIDC	20 <sup>th</sup> Jan 2005
Declaration of Financial Close	23 <sup>rd</sup> Jun 2005
Construction commencement	2 <sup>nd</sup> Jul 2005
Airport Opening	24 <sup>th</sup> May 2008

1.23 BIAL has also executed other agreements such as EPC Contracts, Communication Navigation Surveillance/Air Traffic Management (CNS-ATM) Agreement with AAI, Financing Agreements with Lenders etc.

1.24 Subject to Article 14 (Assignment and Security) of the CA and in accordance with the terms of the SHA, the shareholding of Siemens Project Ventures GmbH and Unique Zurich AG are subject to the following lock-in restrictions:

1.24.1 Siemens Project Ventures GmbH shall subscribe and hold at least forty percent (40%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening and no less than twenty six percent (26%) for a period of seven (7) years after Airport Opening; and

1.24.2 Unique Zurich shall subscribe and hold at least five percent (5%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening.

1.25 The Shareholding pattern of BIAL at the time of initial phase and as of November 2012 is as under:

**Table 2: Shareholding Pattern of BIAL – Initial**

Shareholder	Share-holding (%)
<b>Private Promoters:</b>	
Siemens Project Ventures GmbH	40%
Flughafen Zurich AG Ltd.	17%
L&T IDPL	17%
Sub-Total	74%
<b>State Promoters:</b>	
Airport Authority of India – (GoI)	13%
Karnataka State Industrial Investment & Development Corporation Limited (GoK)	13%
Sub-Total	26%
<b>TOTAL</b>	<b>100%</b>

**Table 3: Shareholding Pattern of BIAL – Present**

Shareholder	Share-holding (%)
<b>Private Promoters:</b>	
Siemens Project Ventures GmbH	26%
Flughafen Zurich AG Ltd.	5%
GVK Group - Bangalore Airport & Infrastructure Developers Private Limited	43%
Sub-Total	74%
<b>State Promoters:</b>	
Airport Authority of India – (GoI)	13%
Karnataka State Industrial Investment & Development Corporation Limited (GoK)	13%
Sub-Total	26%
<b>TOTAL</b>	<b>100%</b>
Note: GVK Group acquired (a) 17% of equity shares from Larsen & Toubro (b) 12% of equity shares of Flughafen Zurich and (c) 14% of equity shares from Siemens.	

1.26 In order to meet the expected passenger traffic of 17.2 million in 2015, BIAL has taken up expansion of the existing Passenger Terminal Building (T-1 Expansion) at a cost of Rs. 1479 crore which will be funded through internal accruals and additional debt. The expansion is expected to be completed by middle of 2013.

## **2 Summary of key agreements entered into by BIAL**

2.1 The key agreements in respect of BIAL inter alia include:

- 2.1.1 Concession Agreement including amendment
- 2.1.2 Land Lease Agreement
- 2.1.3 State Support Agreement
- 2.1.4 CNS/ ATM Agreement
- 2.1.5 Shareholders Agreement

Summary details of the above agreements are given below.

2.2 Concession Agreement: The CA entered in to between MoCA – Gol and BIAL on 5<sup>th</sup> July 2004, is an agreement for the Development, Construction, Operation and Maintenance of Bangalore International Airport. The salient features of the CA are as under:

2.2.1 Article 3.1 of the CA - Gol grants BIAL the exclusive right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport (excluding the right to carry out the Reserved Activities and to provide CNS/ ATM which are required to be provided by AAI)

2.2.2 Scope of the Project – Development and Construction of the Airport on the site in accordance with the provisions of the agreement, Operation and maintenance of the airport and performance of the Airport Activities and Non-Airport Activities in accordance with the provisions of the agreement, performance and fulfilment of all obligations of BIAL in accordance with the provisions of the agreement.

2.2.3 Rights – BIAL may carry out any activity or business related or ancillary to the activities referred to in the Concession or which BIAL considers desirable or appropriate to be carried on or engaged in connection therewith (including any infrastructure service considered by BIAL to be reasonably necessary for the activities referred to) and any activity or business in connection with or related to the arrival, departure and / or handling of aircraft, passengers, baggage, cargo and / or mail at the Airport; and any activity or business in connection with or related to the development of the Site or operation of the Airport to generate revenues including the development of commercial ventures such as hotels, restaurants, conference venues, meeting facilities, business centres, trade fairs, real estate, theme parks, amusement arcades, golf courses and other sports and/or entertainment facilities, banks and exchanges and shopping malls. BIAL may, subject to and in accordance with the terms of this agreement, at any time, grant Service Provider Rights (including the right of the Service Provider Right Holders to grant sub-rights) to any Person for the purpose of carrying out the activities.

2.2.4 Concession Fee – Article 3.3 of the CA provides that BIAL shall, in consideration for the grant by Gol of the Concession pursuant to Article 3.1, pay to Gol a fee amounting to four per cent (4%) of Gross Revenue annually on the terms specified. The Gross Revenue means all pre-tax revenue of BIAL, excluding the following: (a) payments made by BIAL for the activities undertaken by Relevant Authorities pursuant to Article 8.4, 8.5 and 8.6; (b) Insurance proceeds; and (c) any amount that accrues to BIAL from sale of any capital assets or items (d) payments and/or monies received in respect of air navigation and air traffic management services (e) payments and/or monies collected by BIAL for and on behalf of any governmental authorities under applicable law. The Concession Fee shall be determined in respect of each financial year of BIAL occurring on and after the Airport Opening Date. The Concession Fee in respect of the first ten (10) Financial Years (the Deferred Payment) shall be payable in twenty (20) equal half-yearly instalments the first such instalment being due and payable on the 30th of June and second such instalment being due and payable on 31st of December (each of these dates referred as the Reference Date.) in the eleventh (11th) Financial Year, with the remaining instalments each payable on each Reference Date falling thereafter. Payments made under Article 3.3 shall be treated as part of the operating expenses of the Airport with the exception of deferred payment under Article 3.3.5, which are in lieu of payments to be accounted for in the relevant year. Other than in the case of late payment in which case Article 18.14 shall apply, no interest shall be levied or due in respect of any amount or payment to be made pursuant to this Article 3.3.

2.2.5 Exclusivity - Article 5.2.1 of the CA, provides that no new or existing airport shall be permitted by Gol to be developed as, or improved or upgraded into, an International Airport within an aerial distance of 150 kilometres of the Airport before the twenty-fifth anniversary of the Airport Opening Date. Further, Article 5.2.2 of the CA, provides that No new or existing airport (except for Mysore and Hassan airports) shall be permitted by Gol to be developed as, or improved or upgraded into, a Domestic Airport within an aerial distance of 150 kilometres of the Airport before the twenty-fifth anniversary of the Airport Opening Date.

2.2.6 Article 5.5 of the CA provides that the existing airport in Bangalore known as the HAL airport located at Vimanapura, Bangalore shall from and with effect from the date on which the Airport Opening occurs (the greenfield international airport comprising of the Initial Phase, to be constructed and operated by BIAL at Devanahalli) , Gol will ensure that the Existing Airport shall not be open or available for use for commercial civil aviation operations and shall no longer be classified as a civil enclave under the AAI Act 1994. The CA also provides that from and with effect from the date on which Airport Opening occurs, Gol will issue and publish an appropriate notification stating that the Existing Airport is no longer open or available for commercial civil aviation operations (which shall, for these purposes, not include use for Airport activity at times

of national emergency or (at any time) by aircraft owned or operated by or for the Indian Air Force or other Armed Forces of India or for transportation of dignitaries by special government hired VIP aircraft or otherwise for their use or activities) and that it is no longer classified as a civil enclave under the AAI Act and also for ensuring that the international code (BLR) of the Existing Airport is transferred to the Airport. Further, it also states that General Aviation Services (other than those relating to commercial aircraft) may continue to be provided at the Existing Airport notwithstanding its closure to commercial aircrafts.

2.2.7 Lock-in-Period – Article 6.2 of the CA lays down the following lock-in restrictions subject to Article 14 (Assignment and Security) and in accordance with the terms of the Shareholders Agreement:

2.2.7.1 Siemens Project Ventures GmbH shall subscribe and hold at least forty percent (40%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening and no less than twenty six percent (26%) for a period of seven (7) years after Airport Opening; and

2.2.7.2 Flughafen Zuerich AG shall subscribe and hold at least five percent (5%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening.

2.2.8 Master Plan – Article 7.1 of CA provides that BIAL shall review the Master Plan every five (5) years. If, on such review, BIAL considers it necessary to revise the Master Plan to reflect changed circumstances at the Airport, BIAL shall revise the Master Plan and provide Gol with a copy of such revised Master Plan.

2.2.9 Charges – Article 10 of the CA provides that the Airport Charges specified in Schedule 6 (Regulated Charges) shall be consistent with ICAO Policies and that the Regulated charges set out in Schedule 6 shall be indicative charges. Prior to Airport Opening BIAL shall seek approval from the Ministry of Civil Aviation for the Regulated Charges, which shall be based on the final audited project cost.

2.2.10 BIAL and / or Service Provider Right Holders shall be free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the Site, other than the facilities and services in respect of which Regulated Charges are levied.

2.2.11 Schedule 6: Regulated Charges.

2.2.11.1 Landing, Housing and Parking Charges (Domestic and International): The charges to be adopted by BIAL at the time of airport opening will be the higher of: (a) The AAI tariff effective 2001 duly increased with inflation index, as set out hereunder, upto the airport opening date **Or** (b) The then prevailing tariff at the other AAI airports

2.2.11.2 Passenger Service Fee (Domestic and International): The charges to be adopted by BIAL at the time of airport opening will be the higher of: a) The AAI tariff effective 2001 duly increased with inflation index, as set out hereunder, upto the airport opening date **Or** b) The then prevailing Passenger Service Fee at the other AAI airports. The Passenger Service Fee chargeable by BIAL, as given above, is inclusive of the cost of Security Expenditure on Central Industrial Security Force (CISF). This component of cost towards Security Expenditure on CISF shall be revised upwards by BIAL as and when directed by Gol.

2.2.11.3 User Development Fee (UDF) (Domestic and International): BIAL will be allowed to levy UDF, w.e.f Airport Opening Date, duly increased in the subsequent years with inflation index as set out hereunder, from embarking domestic and international passengers, for the provision of passenger amenities, services and facilities and the UDF will be used for the development, management, maintenance, operation and expansion of the facilities at the Airport.

2.2.12 Article 13.7 of the CA provides that Unless terminated earlier, the CA shall continue in full force and effect from its commencement in accordance with Article 4 until the thirtieth (30<sup>th</sup>) anniversary of the Airport Opening Date whereupon the term of the Agreement shall at the option of BIAL be extended for a further period of thirty (30) years and that BIAL may at any time prior to the twenty-seventh (27<sup>th</sup>) anniversary of the Airport Opening Date, exercise the aforesaid option of extending the term of this Concession Agreement by another thirty (30) years. In the event of BIAL not exercising its option of extending the term of this Concession Agreement, then the Concession Agreement shall expire on the thirtieth (30<sup>th</sup>) anniversary of the Airport Opening Date and Gol or its nominee shall acquire all of BIAL's rights, title and interests in and to the Airport on payment on the Transfer Date to BIAL the aggregate of:

2.2.12.1 one hundred per cent (100%) of the par value of the issued, subscribed and paid-up share capital of BIAL; and

2.2.12.2 one hundred per cent (100%) of the Debt.

2.2.13 Subsequent to the execution of the Original Concession Agreement, and due to unforeseen commercial developments in the civil aviation sector in India leading to an increase in air traffic and passengers, the Gol and BIAL discussed and mutually agreed to amend the Original Concession Agreement (Amendment agreement dated 20<sup>th</sup> November 2006). The original CA was amended to include and replace the definition of Financial Close, Shareholders Agreement, Description of Initial Phase revised, Master plan revised and amended etc.

2.3 Land Lease Agreement: The Land Lease Agreement dated 20<sup>th</sup> January 2005, was entered in to between KSIIDC and BIAL. As per the LLA the GOK has agreed to provide financial support to

improve the viability of the Project and enhance the bankability of the initial phase and has also agreed to have KSIIDC provide the Site on lease to BIAL.

2.4 Land Lease Agreement provided for 3884 acres of land to be leased to BIAL and additional land area of approx. 133 acres to be procured by KSIIDC and leased to BIAL. The Authority notes, from the Financial statements of BIAL, as of 31<sup>st</sup> March 2013 that out of the additional 133 acres that KSIIDC had to acquire, KSIIDC has handed over land aggregating to approx. 124 acres, thereby making the total land leased by KSIIDC to BIAL at 4008 acres.

2.5 As regards the lease rent payable, the Land Lease Agreement provides that from the Airport Opening date till the end of seven years 3% per annum of the site cost of Rs. 175 crores shall be payable, and for the eighth year 6% of the site cost shall be payable and for every year following the eighth year after the Airport Opening date and the remainder of the term the lease rent payable shall be the lease rent of the preceding year plus 3%

2.6 State Support Agreement (SSA): The SSA entered into between GoK and BIAL on 20<sup>th</sup> January 2005 provides financial support to improve the viability of the Project and enhance the bankability of the initial phase and has also agreed to have KSIIDC provide the site on lease to BIAL. Salient features of the SSA are as given below:

2.6.1 The State Financial Support (interest free loan) specified in the SSA is Rs. 350 crore out of which Rs. 335 crores has been disbursed by GoK. As per the SSA no interest shall be payable by BIAL on the outstanding amounts of the State Financial Support paid to BIAL. However, interest shall be paid on delayed repayment of instalments. The State Financial Support is repayable in twenty equal half yearly instalments, first of which will become due on the 30<sup>th</sup> April in the eleventh (11<sup>th</sup>) Financial Year and the next on 31<sup>st</sup> October in the same year, with the remaining instalments being payable on 30<sup>th</sup> April and 31<sup>st</sup> October of the subsequent years.

2.6.2 The SSA also provides BIAL to review the Master Plan every 5 years and if on such review BIAL considers it necessary to revise the master plan to reflect changed circumstances at the airport, BIAL shall revise the Master Plan and provide GoK with a copy of such revised Master Plan, with explanations as appropriate. It also provides that the BIAL shall complete the construction of the Initial Phase and ensure that Airport Opening date shall occur by not later than the date falling thirty three (33) months after Financial Close.

2.6.3 Project support by GoK – The SSA also states that GoK will not revoke the decision to appoint the Private Promoters as joint venture partners in BIAL and to award the Project to the Project Promoters. In recognition of the investment to be made by the Shareholders and Lenders and subject to material compliances by the Shareholders and the Lenders with all applicable and the terms and conditions thereof, GoK will not take any steps or action in contradiction of this



agreement which results or would result in Shareholders or lenders being deprived of their Investment or economic interest in the project except in accordance with applicable law.

2.6.4 Non-Airport Activities - The SSA also states that the GoK recognises that BIAL may carry out any activity or Business in connection with or related to the development of site or operation of airport to generate revenues including the development of commercial ventures such as hotels, restaurants, conference venues, meeting facilities, business centres, trade fairs, real estate, theme park, amusement arcades, golf courses and other sports/ entertainment facilities, banks and exchanges and shopping malls.

2.6.5 Further to the Land Lease Agreement, Land Lease Deed was executed on 30<sup>th</sup> April 2005

2.7 CNS / ATM agreement: The CNS ATM Agreement has been entered in to between AAI and BIAL on 6<sup>th</sup> April, 2005 which covers the Scope of services provision of CNS/ATM services by AAI in the Pre-commissioning phase, Commissioning Phase and Operation Phase. As per the agreement AAI shall be entitled to recover the Route Navigation Facilities Charges directly from airlines. The Terminal Navigation Landing charges payable by airlines shall be paid directly by airlines to AAI and BIAL shall incur no liability in respect of charges. Rental to be paid to BIAL in consideration of the facility and office space as set out. Rental rate shall be on a cost recovery basis and mutually agreed.

2.8 Shareholders Agreement - The Original SHA dated 23<sup>rd</sup> January, 2002 between the State Promoters - KSIIDC, AAI and the Private Promoters -Siemens Project Ventures GmbH, Unique Zurich, L&T, BIAL, was amended on 10.06.2005. Salient features of the Shareholders Agreement is as given below:

2.8.1 The original authorised share capital of the Company was Rs. 50,00,00,000/- (Rupees Fifty Crores) only, divided into 5,00,00,000 (Five Crores) equity shares of the face value of Rs. 10/- (Rupees Ten) each. The present authorised share capital of the Company has since been increased to Rs. 350,00,00,000/- (Rupees Three Hundred Fifty Crores) to meet the requirements of the Project.

2.8.2 The SHA provides that Subject to the AAI Equity Cap (maximum Equity Contribution of AAI, not exceeding Rs.50 crores), the combined shareholding of the State Promoters shall be no less than twenty six percent (26%) of the total paid up share capital and KSIIDC, or its Affiliates, shall contribute to such additional amounts to maintain the combined shareholding of twenty six percent (26%) if the AAI Equity Cap is reached.

2.8.3 The SHA provides that upon subscription to the Shares in accordance with this Agreement, the paid-up capital structure of the Company shall be as follows:

2.8.3.1 Private Promoters and Other Investors (collectively) – 74%

2.8.3.2 State Promoters (collectively) – 26%

2.8.4 Further, SHA provides that the shareholding of the Private Promoters shall be subject to the following lock-in restrictions as under:

2.8.4.1 Siemens shall subscribe and hold at least forty percent (40%) of the paid up capital of the Company until a period of three (3) years after the Commercial Operations Date and in no event less than twenty six percent (26%) Shares for a period of seven (7) years after Commercial Operations Date;

2.8.4.2 Unique Zurich shall subscribe and hold at least five percent (5%) Shares in the paid up capital of the Company until a period of three (3) years after the Commercial Operations Date.

2.8.5 Circumstances in which further Capital may be raised by simple majority:

2.8.5.1 The SHA provides that in the unlikely event the Company suffers operating losses, the funding whereof has not been provided for in the business plan, the Board may appoint a financial consultant to advise on the possible means of financing that the Company may pursue. It is agreed by the Parties that to the extent possible such financing shall be first through internal accruals and thereafter borrowings. However should there be inadequate internal accruals or borrowings are not available on reasonable terms, the Board may, by a simple majority approve the issuance of further equity through a rights issue to the extent reasonably necessary to fund the uncovered operating losses.

2.8.5.2 If any change in law (including any change in enactment, legislation, regulation, rule, notification, order or directive having statutory force) subsequent to the finalisation of the Detailed Project Report requires a change in the scope of the Project which results in additional capital expenditure, the financing whereof cannot be covered in contingencies or otherwise in the business plan, the Board may appoint a financial consultant to advise on the possible means of financing that the Company may pursue. It is agreed by the Parties that to the extent possible such financing shall be first brought through borrowings. However, should borrowings be not available on reasonable terms, the Board may, by a simple majority approve the issuance of further equity through a rights issue to the extent reasonably necessary to fund such additional capital expenditure.

2.8.6 Unforeseeable events – Further, the Clause 9.8 of the SHA provides that should the Project be impacted financially or otherwise due to any unforeseeable event beyond the reasonable control of the Private Promoters, the following process will be followed:

2.8.6.1 The Parties shall consult with each other upon the course of action to mitigate such risk or costs and the manner of financing, if any, required.

2.8.6.2 In such an event the Board may appoint a financial consultant to advise on the possible manner of financing that the Company may pursue.

2.8.6.3 Pending agreement between the Parties on the manner of financing, the Board may, if it is expedient to do so, raise borrowings or debt on such terms as may be deemed appropriate to meet any financing requirements arising due to the aforesaid event subject to an aggregate limit (together with any existing loan obtained for the purpose of this Clause 9.8) of Rs. 25 crores. The Parties agree that for such financing the Private Promoters may grant unsecured subordinate debt.

2.8.6.4 Should the Parties mutually agree that instead of or in addition to any borrowing, such financing or any part thereof should be through equity subscription by the Parties, and then any subordinated debt provided by the Private Promoters may be converted to equity.

2.8.7 It further provides that the Parties recognise and agree that the risks and costs resulting from unforeseeable events, to the extent possible, shall be caused to be assumed by concerned third parties and / or appropriately insured against, such that protection against such risks and costs is available.

2.8.8 Clause 9.9 of the SHA also states that the Parties recognize that the Airport will operate in a competitive environment and potentially within a short term, in a regulated environment. The Parties, therefore, will cause the Company to operate in a manner, which maximizes efficiencies and utilization of resources.

2.8.9 Clause 13 of the SHA states that the Company in general meeting may declare dividends, but no dividend shall exceed the amount of dividend recommended by the Board. While recommending the declaration of any dividend, the Board will have regard to and consider the expansion plans of the Airport, taking into account the traffic growth, and the need for making provisions therefor.

### **3 MYTP Submission by BIAL - Brief facts and Chronology of events**

3.1 The Airports Economic Regulatory Authority of India (“Authority”) was established under “The Airports Economic Regulatory Authority of India Act, 2008” (the “AERA Act”) to perform the functions in respect of major airports, inter alia:

- 3.1.1 to determine the tariff for the aeronautical services;
- 3.1.2 to determine the amount of the development fees in respect of major airports;
- 3.1.3 to determine the amount of the passengers service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934; and
- 3.1.4 to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any Authority authorized by it in this behalf.

3.2 As per Section 2 (a) of the AERA Act, any service provided, inter alia,

- 3.2.1 for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport;
- 3.2.2 for ground safety services at an airport;
- 3.2.3 for ground handling services relating to aircraft, passengers and cargo at an airport;
- 3.2.4 for the cargo facility at an airport; and
- 3.2.5 for supplying fuel to the aircraft at an airport,

are aeronautical services and the tariff for such aeronautical services at a major airport are to be determined by this Authority in terms of Section 13(1)(a) of the Act.

3.3 In the discharge of its functions of determination of tariff for aeronautical services, and to call for such information as may be necessary to determine tariff under the AERA Act, and to ensure transparency the Authority had issued an Order No.13/2010-11 dated 12th January 2011 (“Airport Order”) finalizing the Regulatory Philosophy and approach for economic regulation of Airport Operators. The Authority thereafter issued Order No. 14/2010-11 and Direction No. 05/2010-11 dated 28<sup>th</sup> February 2011 providing the Authority’s responses to the comments of stakeholders received in response to Consultation Paper 03/2009-10 dated 26<sup>th</sup> February 2010. These Orders and Guidelines were issued by the Authority after extensive stakeholder consultation based on responses received on the White Paper on “Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services” (“White Paper”) on 22<sup>nd</sup> December 2009 and Consultation Paper No.03/2009-10 issued on 26<sup>th</sup> February 2010. The Airports Economic Regulatory Authority of India (Terms and Conditions for determination of tariffs for Airport Operators) Guidelines, 2011 (the “Airport Guidelines”) was also issued on 28<sup>th</sup> February 2011 by the Authority under Section 15 of the AERA Act directing all Airport Operators to act in accordance with the

Guidelines.

3.4 The Authority also finalised the Regulatory Philosophy and approach for Economic Regulation of the Aeronautical Services of Cargo facility, Ground Handling and Supply of fuel to an aircraft (“CGF”) vide Order No. 12/2010-11 (the “CGF Order”) and issued Direction No. 04/2010-11 dated 10.01.2011 (the “CGF Guidelines”) detailing the terms and conditions for determination of tariffs in respect of Service Providers (including Independent Service Providers (“ISPs”)) for the CGF services.

3.5 As per clause 3.1 of the Airport Guidelines, the Airport Operator(s) were required to submit to the Authority for its consideration, a Multi-Year Tariff Proposal (MYTP) for the first control period (from 01.04.2011 to 31.03.2016), within four months of the date of issue of the Airport Guidelines, i.e., by 1<sup>st</sup> July 2011.

3.6 In the meanwhile, the Authority vide its Order No. 15/2010-11 dated 24<sup>th</sup> March 2011 ordered that in respect of 10 major airports namely Kolkata, Chennai, Hyderabad, Bangalore, Cochin, Ahmedabad, Trivandrum, Calicut, Guwahati and Jaipur, the concerned airport operators be permitted to continue charging the tariffs/ charges for all aeronautical services provided by them, at the existing approved rates (as on 28.02.2011), in the interim period i.e. from 01.04.2011 up to date the new tariffs as may be approved by the Authority become effective.

3.7 BIAL filed an appeal (Appeal No.7/2011) before the Hon’ble AERA Appellate Tribunal (“AERAAT”) against the Authority’s Airport Order and Airport Guidelines. BIAL had also filed an Appeal No.12/2011 against the CGF Order and CGF Guidelines relating to tariff determination of ISPs. Key grounds of appeal No.7/2011 and 12/2011 filed by BIAL inter alia are as under:

Appeal No.7/2011

*“... Impugned Order ultra vires the power of the Authority and without jurisdiction  
That the Regulator has totally misconstrued the provisions of the Act to confer upon itself  
the power to indirectly regulate Non Aeronautical and Non-Airport activities / services, in  
the guise of determination of tariff for aeronautical services, under Section 13 of the Act  
The impugned order is contrary to vested rights, equities and estoppels.  
Further jurisdictional error – Regulation of real estate activities.  
Grounds raised in Appeal no. 2/2011 and to be raised in Appeal against Order No. 5 and  
12 and Direction 4.....”*

Appeal No.12/2011

*“... The impugned Guidelines and Impugned orders are issued apparently without any  
power of Authority and are without jurisdiction and ultra vires the Act:  
The Authority has no power under Section 15 of the Act to issue Directions to Independent  
service Providers (ISPs)*

*In order to circumvent lack of power, the Authority has attempted to re-define "Service provider" under the impugned guidelines*

*The Authority has expressly admitted its lack of power to regulate ISPs*

*The Authority has failed to appreciate that the ISPs are sub-contractors and consequently agents of the Appellant – Principal and the Authority could not have regulated such agents directly*

*The Authority has failed to give effect to the provisions of Section 13 (1) (a) (vi) of the Act.*

*The concession agreement excludes regulation of services of Cargo facility, Ground Handling and supply of fuel to aircraft.*

*The interpretation provided by the Authority to the provisions of Section 13 (1) (a) (vi) and Section 2(a) of the Act runs contra to all canons of interpretation and is contrary to trite law.*

*The Authority has failed to appreciate that the true and correct intent and purport of the Act is to regulate the services of Cargo facility, Ground Handling and Supply of Fuel to aircraft by contract and not by artificially superimposing a regulatory or tariff mechanism*

*An interpretation which recognizes and gives effect to settled transactions is to be preferred over any interpretation with upsets settled transactions.*

*The Impugned order is contrary to vested rights, equities and estoppels.*

*....."*

3.8 The Hon'ble AERAAT, in its Order dated 11<sup>th</sup> May 2011, in Appeal No.07/2011 filed by BIAL, ordered as under:

*"In the meantime, without prejudice to the stands taken, let the requisite information/details/data/tariff proposal be furnished by the appellant to the Regulatory Authority. It may continue the process of the determination, but shall not make a final determination without leave of this Court. Time for submission of information/details/data/tariff proposal/details is extended till 31st July, 2011. It is made clear that since the tariff proposal/information/data/details are being directed to be given without prejudice to the claims involved, they shall be treated as confidential by the Regulatory Authority."*

3.9 However, BIAL filed a Miscellaneous Application in Appeal No. 7/2011, on 25<sup>th</sup> July 2011, requesting the AERAAT to direct extension of time to file the MYTP till next date of hearing, i.e., 17<sup>th</sup> August 2011.

3.10 Also, BIAL, vide letter ref. BIAL/AERA/MYTP/2011 dated 25<sup>th</sup> July 2011, requested the Authority to extend the time for submission of MYTP by two months, i.e., till 30<sup>th</sup> September 2011.

This request of BIAL was considered by the Authority and it was decided that, in view of the AERAAT Order dated 11<sup>th</sup> May 2011, the request for extension cannot be accepted and the decision was conveyed to BIAL, vide Authority's letter No. AERA/2001O/BIAL-AC/2009/670 dated 28<sup>th</sup> July 2011.

3.11 BIAL filed a Writ Petition (C) 6.376/2011 before the Hon'ble High Court of Delhi praying, inter alia, for restraining the Authority from taking any coercive action against them for alleged non-compliance of the Airport Order. This petition came up for hearing before the Hon'ble High Court of Delhi on 1<sup>st</sup> September 2011 wherein the same was disposed-off by the Hon'ble High Court of Delhi and time was granted to BIAL upto 15<sup>th</sup> September 2011 to submit the requisite details to the Authority. Delhi High Court, in its order dated 1<sup>st</sup> September 2011, ordered as under:

*" .....However, to put finality to the matter, it is deemed expedient to grant time till 15th September, 2011 to the petitioner to submit to the respondent the balance information/particular sought. Subject to the petitioner furnishing the information by the said date, no fine shall be imposed and no prosecution shall be initiated against the petitioner."*

3.12 Thereafter, BIAL vide their letter no. BIAL/AERA/MYTP/2011 dated 14<sup>th</sup> September 2011, in compliance of Order of Hon'ble High Court of Delhi, submitted the balance information and particulars relevant for MYTP for the first control period starting from FY 2011-12 to FY2015-16 for tariff determination and key results from BIAL's Business Plan from FY 2011-12 to FY 2020-21. In their submission, BIAL submitted that their operations and business is governed by the terms and conditions of the CA entered into between MoCA, GoI and BIAL on 5th July 2004 and related project agreements. In accordance with the CA, the regulated charges include Landing Charges, Parking Charges, Passenger Service Fee (PSF) and Users Development Fee (UDF). The rest of the revenues items were classified by BIAL as non-regulated charges such as Aviation Concessions, Retail, Commercial, among others.

3.13 BIAL, vide submission dated 14<sup>th</sup> September 2011 have stated that considering the provisions of CA and Airport Guidelines requirements, the financial statements have been prepared based on 10 years Business Plan that has been approved by the BIAL's Board. They have stated that Board has deliberated and considered the results for submission to the Authority subject to the condition that any final scenario of tariff determination requiring fresh equity infusion from the respective state promoters of BIAL would be subject to approval of the Board and respective state government.

3.14 BIAL have submitted that their real estate business plan is still under consideration and yet to be firmed up and hence the MYTP and as well 10 years Business plan does not have any inputs/performance on account of Real estate business.

3.15 Further, BIAL have stated that the information submitted by them (submission dated 14<sup>th</sup>

September 2011) is without prejudice to their rights, contentions and the grounds urged in Appeal Nos. 7/2011 and 12/2011<sup>1</sup>, pending adjudication by the AERAAT and that the information, including all the supporting documents, submitted till date, concerning the MYTP for the 1<sup>st</sup> Control Period, are confidential and any disclosure thereof will cause prejudice to BIAL by adversely impacting its commercial position.

3.16 BIAL have reserved the liberty to add, modify, revise, and rectify the information relating to MYTP based on additional information, discussions, clarifications that may be received from the Authority and that these submissions are being made without prejudice to BIAL's right to make further submissions, at a subsequent point in time, if found necessary. BIAL have also identified and segregated the Aeronautical Assets, Non-Aeronautical Assets, Aeronautical Services and Non-Aeronautical Services of tariff under Dual Till.

3.17 Subsequently, BIAL had made a presentation on its MYTP Submission on 10<sup>th</sup> February 2012, and on details of the Terminal – I expansion Project on 2<sup>nd</sup> May 2012

3.18 Subsequent to the above, pursuant to various discussions and correspondences with BIAL, BIAL has submitted a revised MYTP on 21<sup>st</sup> November 2012 along with their Financial Model, wherein they have stated that traffic scenarios and Projections have undergone a significant change, with the actual traffic for F.Y 2011-12 and Projected traffic for 2012-13 reflecting a de-growth in traffic and in view of this, the Projections required a review and revision with respect to Capital Expenditure Plans, means of financing and consequent changes in the Regulatory Building Block, which have been re-assessed and the revised MYTP is submitted herewith.

3.19 Further, the Authority had also requested BIAL to appoint a Consultant for the purpose of assisting the Authority in the tariff determination process. BIAL has appointed a Consultant for this task. The Consultant has assisted the Authority in its deliberations.

3.20 Further to this, additional submissions/presentations have also been made by BIAL on the queries raised by the Authority between January 2013 and June 2013.

3.21 Meanwhile, the Hon'ble AERAAT vide its Order dated 15<sup>th</sup> February 2013, disposed-off the Appeal No. 07/2011 filed by BIAL, ordering that

*"5. .... when the matters came for disposal on merits it was found that in spite of the guidelines the directions issued pursuant thereto yet there would be no impediment for the AERA to consider all the relevant issues and then to finalise the order regarding the determination of tariff of airports.".....*

*"6. If this is so, there would not be any question of proceeding with the hearing of these appeals at this stage since in spite of the impugned orders it will be open for the*

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<sup>1</sup> The Authority notes that Appeals No. 7/2011 and 12/2011 have since been disposed-off by AERAAT



*appellants to canvass all the contentions which they want to raise in these appeals and convince AERA about their merits.*

*7. It has so happened that in spite of elapse of substantial time period the tariff has still not been determined which causes prejudice to both the concerned parties as well as the stakeholders.*

*8. In that view, we would dispose-off these appeals with the direction to the AERA to complete this exercise of determination of tariff and while doing so, the AERA would give opportunities to all the stakeholders to raise all the plea and contentions and consider the same. The impugned orders herein would not come in the way of that exercise. We would, however, request AERA to complete the determination exercise as expeditiously as possible. We have taken this view as we are of the firm opinion that it would not be proper to entertain the appeals on different stages of determination of tariff and to give the finality to the questions of final determination of tariff.....”*

3.22 Subsequent to the above, with reference to the Hon’ble AERAAT vide its Order dated 15<sup>th</sup> February 2013, BIAL had sought time to present to the Authority its plea and contentions. Accordingly, BIAL has made additional presentations to the Authority on 8<sup>th</sup> April 2013 and has made additional submissions related to:

3.22.1 Mechanism of Till to be adopted

3.22.2 Observations with respect to Direction No. 5 and BIAL’s suggestion on the same

3.22.3 Affidavits by Prof. David Gillen and Paper by Shri. K Roy Paul

3.23 BIAL has further submitted its Annual Tariff Proposal to the Authority on the 16<sup>th</sup> April 2013.

3.24 Meanwhile the Hon’ble AERAAT vide its Order dated 3<sup>rd</sup> May 2013, thereafter amended vide its order dated 10<sup>th</sup> May 2013 permitted withdrawal of the Appeal No. 12/2011 filed by BIAL, ordering that

*“By an order dated 15th February, 2013, this Tribunal had disposed of appeals No. 07, 08, 09, 10 & 11 of 2011 with the directions to the AERA to complete the exercise of determination of tariff. We had also directed therein that AERA would give opportunity to all the stakeholders to raise all the pleas and contentions and consider the same. We had requested the AERA to complete the determination of tariff as expeditiously as possible. In this, we had taken a view that it would not be appropriate to entertain the appeals at different stages of determination. We, thus, had expressed specifically that all the pleas could be taken before AERA while determination of the final tariff. In those appeals, Shri Nanda had specifically made a statement that all the pleas and defenses including those*

*relating to impugned guidelines could be considered by AERA on their own merits despite the guidelines issued by AERA in appeal Nos. 08, 09, 10 & 11 of 2011.*

*2. In view of this, Shri Datar, Senior Advocate, after considerable arguments, seeks to withdraw this appeal. He, however, seeks an opportunity to file an appeal against the final tariff order. It is reported that the final tariff order pertaining to independent service providers (ISPs) has now been passed. He also seeks an opportunity to raise all the questions raised herein in his appeal for filing which, he seeks an opportunity. We allow the withdrawal with the liberty sought for by him....”*

3.25 The Authority has carefully examined the submissions made by BIAL on the above matters. It is observed that after the initial MYTP submission dated 14<sup>th</sup> September 2011, BIAL reviewed and revised / modified its submissions. BIAL has made a revised MYTP submission on 21<sup>st</sup> November 2012.

3.26 The Authority has considered and examined the various submissions on different Building blocks made by BIAL based on the revised MYTP submission made by BIAL on 21<sup>st</sup> November 2012 and subsequent additional submissions/clarifications. BIAL’s submissions and the Authority’s examinations in respect of various building blocks are presented in the relevant sections of this Consultation Paper.

## 4 Framework for determination of Tariff for BIAL

4.1 The Authority is determining aeronautical tariffs in accordance with the policy guidance provided by the legislature under the provisions of the AERA Act. The Authority is required to adhere to this legislative policy guidance in discharge of its functions in respect of the major airports. These functions are indicated in Section 13 of the AERA Act:

- 4.1.1 Determination of the tariff for the aeronautical services;
- 4.1.2 Determination of the amount of the development fees including User Development Fee;
- 4.1.3 Determination of the amount of the passenger service fee levied under rule 88 of the Aircraft Rules, 1937 made under Aircraft Act, 1934; and
- 4.1.4 Monitoring the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any Authority authorised by it in this behalf.

4.2 Further to the specification of functions to be performed by the Authority, the legislature also provides policy guidance on the factors, which are to be considered by the Authority in performing those functions. Under Section 13 (1) (a) of the AERA Act, the legislature requires the Authority to determine tariff for the aeronautical services taking into consideration the following factors:

- 4.2.1 the capital expenditure incurred and timely investment in improvement of airport facilities;
- 4.2.2 the service provided, its quality and other relevant factors;
- 4.2.3 the cost for improving efficiency;
- 4.2.4 economic and viable operation of major airports;
- 4.2.5 revenue received from services other than the aeronautical services;
- 4.2.6 concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
- 4.2.7 any other factor which may be relevant for the purposes of the Act

4.3 The Authority, acting in accordance with the legislative policy guidance as above, had issued a white paper on “Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services” on 22<sup>nd</sup> December 2009 and Consultation Paper No.03/2009-10 on 26<sup>th</sup> February 2010, as indicated in Para 3.3 above.

4.4 The GoI supported the White paper of the Authority and MoCA had given its comments at the stage of White Paper vide its letter No.AV.2011/003/2009-AD dated 9th March 2010, wherein it stated inter alia that “...the ultimate objective should be to reduce the burden on the end users

*(passengers).”*

4.5 To operationalize the mandate of the legislature, the Authority had issued the Airport Order and the Airport Guidelines, also incorporating the stated objective of the Government.

**Consideration of submissions made under Single Till and Dual Till:**

4.6 In normal course it would have proceeded to determine the aeronautical tariffs in accordance with the Airport Order and the Airport Guidelines. However, in view of the AERAAT's Order dated 15<sup>th</sup> February 2013, the Authority would now proceed to examine the submissions of BIAL both under Single Till and Dual Till, with reference to various Regulatory Building Blocks. The Authority would also accordingly present the calculations of the different Regulatory Building Blocks in both Single Till and Dual Till. It would also present the financial implications including the tentative estimation of tariff(s). Thereafter it would analyse the various submissions made by BIAL in support of Regulatory Till and present its findings for Stakeholder Consultation.

4.7 In calculations of tariffs under Single Till, the Revenues from Aeronautical Services as well as Non-Aeronautical Services are taken into account, along with the expenses, etc for determining the Aggregate Revenue Requirement for the purpose of tariff determination. In respect of Dual Till, the Aeronautical and Non-Aeronautical activities are separated for the purposes of the various building blocks like Regulatory Asset Base, Operations and Maintenance expenditure, etc and only the Aeronautical portion is considered for determining the Aggregate Revenue Requirement for the purpose of determination of tariff. These are discussed in the relevant sections.

**RAB Boundary**

4.8 The AERA Act requires the Authority to take into consideration “Revenue received from services other than the Aeronautical Services” while determining tariffs for Aeronautical Services. Hence the Authority can take into calculation, all revenues arising from all the services other than Aeronautical Services. Such services could include even those outside the airport terminal and the ones that are generally associated with commercial exploitation of land leased to the airport operator that is in excess of requirement of airport (Generally referred to as Real Estate Development). The Authority had addressed this issue in its Airport Order (See Para 4.11 below) and after Stakeholders' Consultation, decided on the RAB boundary that it will generally follow in its tariff determination of Aeronautical Services.

4.9 Regarding delineation of RAB boundary, the Authority has considered both aeronautical and non-aeronautical services that will be provided by BIAL. As an illustrative list, the non-aeronautical services and activities would include duty free shopping, food and beverages, retail outlets, public admission fee for entry into the terminal, hotel, if any provided inside the terminal building, banks, ATMs, airlines offices, commercial lounges, spa and gymnasium facilities, car parking, etc. The

Authority is aware that this is not an exhaustive list. In addition to the above, individual airport operator may innovate and add more Non-Aeronautical Services so as to improve the passenger conveniences or enhancing ambience of the airport and terminal building.

4.10 The real estate development by the airport operator through commercial exploitation of land leased or granted to it, which is in excess of the airport requirement, would normally be outside the RAB boundary. This means that the revenues from commercial exploitation of such lands would, in normal course, **not** enter into the calculation of revenues required for aeronautical tariff determination. However, there may be such circumstances which the Authority may be required to take into account (like special covenants in the Concession Agreement or Lease Deed, etc.) that may require separate consideration for taking revenues from real estate development into calculation of aeronautical tariffs. An illustrative list of such developments would include hotels (outside the terminal building), Aerotropolis, convention centre, golf course, shopping complexes and residential areas, etc. Again this is not an exhaustive list and the airport operator may develop such real estate for other uses. The Authority understands that the real estate development or for that matter commercial development on such land is subject to the relevant land zoning restrictions of the local bodies and in other specific covenants or special acts like the AAI Act, etc. They may also be governed, additionally, by the covenants of other agreements entered into by the public authorities with the airport operator (for example, OMDA or Lease Agreement, etc.). The treatment considered by the Authority in respect of land in excess of airport requirement for BIAL has been discussed in Paras 26.90 to 26.123 below, which talks about the Authority's approach in this regard.

4.11 The Authority, in its Airport Order, has outlined the principles for inclusion / exclusion of assets from the aeronautical RAB to be considered for tariff determination. The principles for exclusion of assets from RAB Boundary are presented below:

4.11.1 The assets that substantially provide amenities/ facilities/ services that are not related to, or not normally provided as part of airport services, may be excluded from the scope of RAB;

4.11.2 The assets that in the opinion of the Authority do not derive any material commercial advantage from the airport (for example from being located close to the airport) may be excluded from the scope of RAB;

4.11.3 The Authority will not include working capital in the RAB.

4.11.4 Work in Progress (WIP) assets would not be included in the RAB until they have been commissioned and are in use.

4.11.5 The investment made from pre-funding levy (DF) would not be included in the RAB.

4.12 **Asset Allocation of RAB:** The Authority has, for time being, accepted the asset allocation (aeronautical and non-aeronautical asset base or aeronautical and non-aeronautical RAB) given by BIAL while calculating the aeronautical tariffs under the option of Dual Till, and noted that such asset

allocation may not be relevant for the purposes of Single Till. The Authority was required to make the asset allocation under Dual Till as per the orders of AERAAT that the appellants are free to make submissions before the Authority and that the Authority should consider the same. Since BIAL had made submission also under Dual Till (in addition to Single Till), the Authority examined its submissions under Dual Till for which the Authority took into consideration the asset allocation between Aeronautical Assets and Non-Aeronautical Assets as given by BIAL (stating, however that the Authority would commission an independent study for the same).

#### **Revenue Recognition from Cargo, Ground Handling and Fuel Throughput (CGF)**

4.13 As per the provisions of the AERA Act, the Authority considers the services rendered in respect of cargo, ground handling and supply of fuel (CGF) as the aeronautical services. In normal course, the Authority's approach towards recognition of revenue accruing to the airport operator in respect of the CGF services has been that if the service is being provided by the airport operator himself, the revenue accruing to it on account of the provision of the service would be considered as aeronautical revenue and if the service is outsourced by the airport operator to a third party concessionaire, the revenue accruing in the hands of the airport operator through revenue share / rental etc. from such third party concessionaire would be considered as non-aeronautical revenue.

4.14 The Authority notes that the revenues from Cargo, Ground Handling, Fuel farm and Into-Plane operations have been classified by BIAL under Revenue from Non-Aeronautical services.

4.15 The Authority notes that BIAL has classified Fuel Through put fee as part of Non-Aeronautical revenue, which the Authority proposes to consider as part of Aeronautical revenues.

4.16 The Authority proposes to consider revenue from Cargo, Ground Handling and "Into Plane" revenue as part of revenue from Non-aeronautical services in the hands of BIAL, as these have been concessioned out by BIAL and the services are rendered by Third Party Concessionaires as Independent Service Providers (ISPs). Discussion regarding implication of CGF service providers being "agents" of BIAL and not ISPs is given separately in Para 4.18 below

#### **Consideration of Bad debts written off**

4.17 The Authority, in line with its principles on Discounts and bad debts as has been elaborated in the Airport Order and Airport Guidelines, does not propose to allow for Bad Debts and Discounts as these are commercial decisions of the Operator. However, in case, there are specific circumstances of any write-off which in the opinion of the Authority can be considered to be a one-off event, the Authority may consider such write-offs as part of Operating Expenditure.

#### **Consideration of CGF ISPs as Agents of BIAL**

4.18 The Authority also notes that BIAL, in its Appeal No. 12/2011 has stated that the ISPs are the agents of BIAL – The principal (as detailed in Para 3.7 above).The Authority also notes that BIAL,

however, in its Multi Year Tariff Proposal has recognized only its share of revenues from these ISPs as part of its Non-Aeronautical Revenue. While BIAL has subsequently withdrawn its appeal, the Authority proposes to also examine the Multi Year Tariff Proposal submitted by BIAL, considering the revenues earned by BIAL's agents as Revenue in the hands of the Principal – BIAL, which is in line with BIAL's submission in its Appeal No. 12/2011 (i.e. the ISPs are agents of Principal – BIAL).

4.19 The Authority has examined the submissions by BIAL under Single Till and Dual Till (considering CGF service providers as third party concessionaires or ISPs). Further, in view of BIAL's averments made in Appeal No. 12/2011, the Authority has also considered and calculated the impact of treatment of CGF service providers as agents of BIAL in Para 25 below. The same is presented for Stakeholders' consultations.

4.20 To summarise the following scenarios have been reviewed by the Authority and its proposals are being put up for Stakeholders' Consultation:

4.20.1 Single Till Approach – ISPs not considered as Agents of BIAL - Under this approach Aggregate Revenue Requirement (ARR) and corresponding Yield per passenger (YPP) is computed under the "Single Till" approach as is considered by the Authority under Airport Order and Airport Guidelines and adopted by it for other Airports such as Chennai International Airport, Chennai and NSCBI Airport, Kolkata. Under this approach, the Authority would consider the ISPs as concessionaires of BIAL, as was maintained by the Authority in Appeal No. 12/2011 before the Hon'ble AERAAT. Hence, the revenue share earned by BIAL in this case, is considered as part of Non-Aeronautical revenue, as the respective Aeronautical Services are not performed by the Airport Operator (BIAL) for computation of ARR. A view could be taken that the revenues earned by BIAL from these Cargo, Fuel Farm and Ground Handling services is caused to be provided by airport operator and hence merits to be considered as Aeronautical Service. This has already been discussed by the Authority in its tariff determination Order for Mumbai International Airport (Order # 32/2012-13 dated 15<sup>th</sup> January 2013) wherein the Authority had determined the tariffs for Aeronautical Services considering revenue received by the Airport Operator from CGF Service providers as part of Non-Aeronautical Revenue to ensure that the same is tractable and transparent.

4.20.2 Single Till Approach – ISPs considered as Agents of BIAL - This approach is similar to the approach detailed in Para 4.20.1 above, except for considering the ISPs as agents of BIAL, in line with BIAL's submission before the Hon'ble AERAAT in Appeal No. 12/2011 wherein they had averred that *"The Authority has failed to appreciate that the ISPs are sub-contractors and consequently agents of the Appellant – Principal and the Authority could not have regulated such agents directly"*. In line with BIAL's submission, the Authority proposes to consider the total revenue earned by the Concessionaires (as submitted by BIAL) as revenues accruing to BIAL from

the provision of Aeronautical Services. This is so by virtue of the ISPs (providing CGF Services) being the Agents of the Airport Operator – BIAL. Thus the services of Cargo, Fuel Farm and Ground Handling are deemed to be rendered by the Airport Operator himself and consequentially the total revenue therefrom has to be considered as revenue from the respective Aeronautical Services provided by BIAL under the AERA Act.

4.20.3 Dual Till Approach – ISPs not considered as Agents of BIAL - Under the Dual Till, the ARR and YPP is computed only considering Aeronautical assets, Expenditure and Depreciation relating to such Aeronautical Assets and return on such Aeronautical Assets, after reviewing the allocation of assets and expenditure as submitted by BIAL. Further, under this approach, the ISPs are not considered as Agents of BIAL, in line with Authority's submission before Hon'ble AERAAT and only the share of revenues accruing to BIAL has been considered as part of the Non-Aeronautical Revenues.

4.20.4 Dual Till Approach – ISPs considered as Agents of BIAL - This approach is similar to Para 4.20.3 above. However, the gross revenues earned by ISPs are considered as Aeronautical Revenue earned from provision of Aeronautical services of CGF in the hands of BIAL.

#### **Future Capital Expenditure – Means of Finance:**

4.21 The Authority also proposes to consider the Future Capital expenditure requirements as estimated by the company, means of financing the proposed expenditure requirements and the manner of funding shortfall if any. Authority's consideration of these matters and its view are listed in Para 28 below. The Authority also notes that the Concession Agreement expressly provides for UDF to be used, inter alia for "expansion of the facilities at the Airport". It also notes that in accordance with the provisions of AAI Act, ADF (that is in the nature of a Capital Receipt) would not be applicable in case of BIAL. The Concession Agreement therefore appears to have provided for Capital Financing through UDF. If UDF or any part thereof is used as a Capital financing measure, its nature and character would be akin to that of Development Fee (DF) and would need to be treated accordingly. Should BIAL require this provision to be used for capital needs for expansion and puts forth appropriate proposal therefor, the Authority would, upon review, suitably consider the same.



## **5 Control Period**

5.1 In terms of Airport Guidelines issued, Control Period means a period of five Tariff Years, during which the Multi Year Tariff Order and Tariff(s) as determined by the Authority pursuant to such Order shall subsist and the first Control Period shall commence from 1<sup>st</sup> April 2011.

5.2 As per the guidelines, BIAL have furnished details / information and particulars relevant for the MYTP for the First Control Period.

5.3 It is also noted that BIAL, while determining the Aggregate Revenue Requirement (ARR) for the first control period commencing 01.04.2011, have included an amount of Rs. 241.6 Crores as NPV of Shortfall as on April 2011 to the ARR of the first year – FY 2011-12 under Single Till and Rs. 528.8 Crores as NPV of Shortfall under Dual Till.

5.4 The Authority notes that almost 2 ½ years out of the 5 year control period has elapsed and the tariff determined is to be recovered over the balance tenure of the Control Period.

### **Proposal No 1. Regarding Control Period**

#### **1.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To consider the first Control Period in respect of determination of tariffs for aeronautical services in respect of Bengaluru International Airport to be from 01.04.2011 up to 31.03.2016.**

## 6 Pre-control period shortfall claim

### (a) BIAL's submission on Pre-control period losses

6.1 BIAL, in its revised MYTP submission has a claimed shortfall for the Pre-control period 2008-09 to 2010-11, as the control period prescribed in the Airport Guidelines commences from 2011-12 and the earlier UDF approved by MoCA was on an "Adhoc" basis.

6.2 BIAL has submitted as follows:

*BIAL submitted various submissions for approval towards levy of domestic UDF. Based on the justification furnished and detailed discussions, MoCA approved Rs. 260/- (incl. of applicable taxes) as against proposed levy of Rs. 675/- per departing domestic passengers on **adhoc** basis during January 2009.*

*BIAL had a carried forward loss of Rs.53.28 crore as of pre-AoD. Post approval for levy of UDF on adhoc basis from AoD, Operations resulted in a loss of Rs. 97.03 crore during the first year of its operation (i.e., FY:2008-09) and the accumulated loss aggregated to Rs. 150.31 Crore as up to 2008-09 (as per the audited accounts). BIAL had ensured high quality in performance standards and is expanding the infrastructural facilities to meet the increasing demand of both passengers and airlines.*

*BIAL has submitted its Multi Year Tariff Proposal (MYTP) for determination of tariff by considering fair return as well for the previous period (i.e., pre-control period FY 2008-09 to FY 2010-11). By this it is ensured that the adhoc UDF so approved was re-tracked and applicability of revised rate of UDF prospectively, after notification of regulatory powers to the Authority. UDF is a revenue enhancing measure and the rate thereof is so determined so as to ensure fair rate of return on the RAB.*

*It is quite evident that the adhoc UDF so approved was insufficient and BIAL was not able to obtain a fair rate of return on RAB resulting in loss during the first year of operation itself.*

*It is essential to maintain and up-grade the facilities to provide / meet the international performance quality standards as per IATA for all the stakeholders. One of the functions of the Authority is to maintain the economic and viable operation of major airports. In order to achieve this objective, BAIL needs to be duly compensated with assured return for the entire period under consideration i.e., from inception.*

**Table 4: Value of Pre-Control shortfall claimed by BIAL – Rs. Crore**

<b>Till Mechanism</b>	<b>Net Present Value of Pre-control Shortfall claimed by BIAL and added to the shortfall of the first control period – Rs. Crore</b>
Single Till	241.61
Dual Till	528.80

6.3 As per BIAL, Shortfall under Single Till has been calculated as under:

**Table 5: Computation of Pre-Control period shortfall submitted by BIAL under Single Till - Rs. Crore**

<b>Particulars</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>Total</b>	<b>Basis of Claim</b>
Cost of Debt	6.66%	7.72%	8.12%		Cost of Debt computed as: Interest cost as per Financials ----- Average Debt balance
Cost of Equity	24.40%	24.40%	24.40%		As per BIAL's submission on Cost of Equity
Fair Rate of Return	10.08%	10.76%	11.36%		FRoR has been computed for each year by computing the gearing in each year, multiplied by the respective cost of debt and cost of equity  Equity considered for the purpose of Gearing has been computed considering Equity excluding losses in case of Accumulated P&L having Debit balance and including P&L balance in case of Accumulated P&L being in credit.
RAB considered for Return (Rs. Crore)	1,558.99	1,770.69	1,656.52		Average RAB as per books has been considered except for 1st year of operations where the closing RAB has been considered proportionate to the number of days in Operation of the airport (312 days of 365 days)
Return on RAB (Rs. Crore)	157.13	190.45	188.23		FROR % * Average RAB
Depreciation (Rs. Crore)	112.85	133.69	134.60		Depreciation as per the audited accounts has been considered for reimbursement.
Operating Costs (Rs. Crore)	148.86	165.50	176.10		Operating Expenditure as per Financial Statements has been considered as a reimbursement, excluding

Particulars	2008-09	2009-10	2010-11	Total	Basis of Claim
					Forex losses. Bad debts/ waivers have been claimed back as part of the shortfall
Income Tax (Rs. Crore)	0.86	8.78	29.61		Total tax payment (both charged off to P&L and carried as credit in books) has been considered for claim
Aggregate Revenue Requirement (Rs. Crore)	419.70	498.43	528.53		
Less: Revenue from Operations (Aero Revenue and Non-Aero Revenue)	(309.50)	(464.60)	(538.20)		As per financials
Opening P&L Shortfall	53.28				Opening balance in P&L as at the commencement of Airport Operations has been claimed
Net Shortfall	163.48	33.83	(9.67)	187.64	
Add: OMSA and Concession Fee	10.43	2.16	(0.62)	11.98	As OMSA Performance fee and Concession fee is also payable on the shortfall which will be reimbursed and hence considered as Revenue
Total claim	173.91	35.99	(10.28)	199.62	
Compound factor	1.22	1.11	1.00		
Compounded value	212.03	39.86	(10.28)	241.61	

6.4 BIAL has claimed shortfall under Dual Till mechanism under the same principles but by considering the Return on Aeronautical assets and by allocating a part of the total Depreciation cost and Operating Expenditure towards the Aeronautical Assets. Basis of segregation adopted by BIAL and the resulting computations are as given below:

**Table 6: Basis of Pre-Control period shortfall claim adopted by BIAL under Dual Till**

Particulars	2008-09	2009-10	2010-11
Aeronautical Assets to Total Assets	82.23%	82.01%	81.66%
Depreciation – Aeronautical to Total Depreciation cost	82.23%	82.01%	81.66%
Operating Expenditure - % considered as Aeronautical to Total cost	80.00%	80.00%	80.00%
% of Opening Shortfall considered	100.00%		
Taxation - % considered as Aeronautical	80.00%	80.00%	80.00%

Particulars	2008-09	2009-10	2010-11
% of Non-Aeronautical revenues considered for reduction	0.00%	0.00%	0.00%

**Table 7: Computation of Pre-Control period shortfall submitted by BIAL under Dual Till – Rs. Crores**

Particulars	2008-09	2009-10	2010-11	Total
FROR *RAB	129.19	156.19	153.71	
Depreciation	92.79	109.64	109.91	
Operating Expenditure	119.09	132.40	140.88	
Taxation	0.69	7.03	23.69	
Opening Shortfall	53.28	-	-	
Sub Total	395.04	405.26	428.18	
Less: Aviation Revenues	- 170.60	- 290.90	- 331.40	
Shortfall for compensation	224.44	114.36	96.78	
OMSA and concession fee payment	14.33	7.30	6.18	
Gross Shortfall	238.76	121.66	102.96	
Compounding factor	1.22	1.11	1.00	
Compounded Shortfall	291.10	134.75	102.96	528.80

**(b) Authority’s examination of BIAL’s Submission on Pre-control period losses**

6.5 The Authority notes that the Ministry of Civil Aviation has granted “Adhoc” UDF of Rs. 1070/- (Ref: AIC No. 11/2008 dated 22<sup>nd</sup> September 2008) to be collected from International Passengers and “Adhoc” UDF of Rs. 260/- to be collected from Domestic Passengers from 16<sup>th</sup> January 2009. (Ref: MoCA letter F. No. AV 20036/007/2008-AD dated 9<sup>th</sup> January 2009). A reading of the referred letter indicates that certain information requested for from BIAL was still awaited as at the date of issue of the subject letter as detailed below:

*“..... it is the delay in furnishing of requisite information by BIAL which has prevented the Government of India from making a determination that the charges proposed by BIAL are consistent with and in compliance of the ICAO policies and thereby taking a view in the matter. As such, there has been no default on the part of the Government of India.*

*In view of the position stated above, I am directed to request you to provide the complete information, at the earliest, so as to enable the Government to conclude the diligence process and take a final view in respect of the proposals submitted by BIAL. The Ministry of Civil Aviation looks forward to cooperation and compliance on part of BIAL so that the project and the larger interests of the user public do not suffer.*

*In the meantime, BIAL is permitted to levy a UDF @ Rs. 260/- per departing domestic passenger, with effect from 16.01.2009, on an 'ad-hoc' basis. This levy shall be inclusive of*

*all applicable taxes. Further, BIAL may please finalize their expansion plan within a period of three months.”*

6.6 The Authority notes that BIAL had approached MoCA for increasing the UDF, which was forwarded by MoCA to the Authority for determination. The Authority took up the matter of determination of UDF for Hyderabad International Airport Limited (“HIAL”) and BIAL and wrote to BIAL in January 2010 to submit details on various parameters and projections. BIAL, in response submitted that:

*“Whereas there is definitely a need for increase in UDF, BIAL would like to understand in detail the parameters for sanction of UDF in the process of being finalized by AERA. Once the parameters are understood, BIAL will submit the appropriate information at the earliest possible”*

6.7 The Authority followed up on the matter and sent a reminder, on 21<sup>st</sup> September 2010 to BIAL, requesting for the submission, to which BIAL responded that:

*“Kindly note that as mentioned in BIAL letter dated 22<sup>nd</sup> January 2010, BIAL would like to understand in detail the parameters of sanction of UDF. Further BIAL is in advanced stages of finalising the Master Plan for expansion of Terminal One and construction of Terminal 2. Also AERA is yet to come up with the guidelines for Economic Regulation in the airport. In view of the above, you would appreciate that it would be appropriate for BIAL to submit the revised computation of UDF once AERA comes up with the regulatory philosophy and guidelines for regulated charges as well as BIAL completes the Master Plan.”*

6.8 Also, the Authority notes that while Schedule 6 of the Concession agreement provided BIAL the right to charge Landing and Parking charges which could be the higher of AAI tariff effective 2001 duly increased with inflation index upto the Airport Opening Date or the then prevailing tariff at other AAI airports, BIAL adopted the then prevailing tariff at other AAI airports, without any increase.

6.9 In the meanwhile, the Authority, vide its Order 06/2010, dated 26<sup>th</sup> October 2010, had approved the “Adhoc” UDF for HIAL wherein the ARR was arrived at, which were broadly in line with the Airport Order and Airport Guidelines, which was issued later, in February 2011. In this Adhoc UDF order, the Authority had computed the ARR considering the WACC on the RAB from the period 2008-09 – the period of operation of the airport.

6.10 Authority’s view on examination of each aspect of the Pre-control period shortfall claim is as detailed below:

**Table 8: Authority's analysis of various aspects of Pre-Control shortfall claim**

<b>Particulars</b>	<b>Claim by BIAL</b>	<b>Observations by the Authority</b>
Cost of Debt	Claimed as Interest cost / average loan balance	The Authority notes that these are based on the audited details of the Interest Cost and Debt balances and hence considered as such.
Cost of Equity	24.4%	The cost of equity proposed to be considered for BIAL for the control period is proposed to be allowed for the pre-control period also. Refer Para 13 below on Cost of Equity wherein the Cost of Equity at 16% is proposed.
Fair Rate of Return	Equity considered for the purpose of Gearing has been computed considering Equity excluding losses in case of Accumulated P&L having Debit balance and including P&L balance in case of Accumulated P&L being in credit.	There have been cumulative losses during the first 2 years, as can be seen from the audited Financial statements. Hence the Authority proposes to accept the methodology submitted by BIAL.
Regulatory Asset base considered for return	Average RAB as per books has been considered except for 1 <sup>st</sup> year of operations where the closing RAB has been considered proportionate to the number of days in Operation of the airport (312 days of 365 days)	In view the Airport Operations commencing on 23 <sup>rd</sup> May 2008, the Operator did not have a significant Opening Asset Base as of 1 <sup>st</sup> April 2008, with which the average asset base (as prescribed in Direction 5) could be considered. Hence Authority proposes to consider the submission made by BIAL. The Authority has considered Foreign Exchanges loss / gain values capitalised to the asset values, and appropriately adjusted the RAB on this account.
Depreciation	Considered as per books	The Authority proposes to consider the proposal submitted by BIAL.
Operating Expenditure	As per audited financials, excluding: Forex gains/ losses Including Bad debts	Bad Debts Provisions are not proposed to be included as part of the Operating Expenditure for computation of shortfall.
Income Tax	Total tax payment (both charged off to P&L and carried as credit in books) has been considered for claim	Submission is proposed to be considered.

Particulars	Claim by BIAL	Observations by the Authority
Revenue from Operations	As per financials	<p>The Authority noted that, while considering the Aeronautical Income and Non-Aeronautical Income, BIAL has not considered Interest Income which forms part of the "Other Income" in financials. The Interest Income earned is proposed to be included as part of Non-Aeronautical revenue and adjusted from the ARR, in computation of the shortfall.</p> <p>The Authority notes that BIAL has submitted certificate from a Chartered Accountant detailing the Interest received on the Security Deposit received for a hotel project. The Authority proposes to consider the Interest Income, excluding the Interest earned on hotel deposits as part of the Non-Aeronautical Revenues, as per Proposal 5.a.iv below.</p>
Opening P&L Shortfall	Opening accumulated losses as of 1 <sup>st</sup> April 2008 – Rs. 53.3 Crores has been claimed as Shortfall in 2008-09	The Authority proposes to compute WACC considering the full value of Equity invested (without reducing the Accumulated losses). Hence, the Authority proposes not to allow accumulated losses as of Airport opening date (i.e Rs. 53.3 Crores) to be added to the shortfall computations.
Calculation of Concession Fee and OMSA Fee on the Pre-control shortfall	Reimbursement of OMSA Fee at 2% and Concession Fee at 4% as the same is payable on any revenue earned by BIAL.	Authority has examined the issue of the OMSA fee payable to M/s Unique in Para 17.67.3 below. The Authority has allowed OMSA Fee at 1.29% as was paid by BIAL to M/s Unique (though in the agreement the OMSA Fee has a ceiling of 2%). It proposes to allow the Concession Fee of 4% as per the Concession Agreement.

6.11 To summarise, while computing the Pre-control shortfall, the Authority proposes to consider following:

- 6.11.1 Reducing Bad Debts from the Operation and Maintenance Expenditure claimed
- 6.11.2 Not to consider loss prior to Airport Opening
- 6.11.3 Considering Interest Income as part of Non-Aeronautical Revenue and reckon the same for computation of Pre-control period shortfall, excluding Interest earned on Deposit received for hotel Project.
- 6.11.4 Considering OMSA Performance fee at 1.29% as detailed in 17.67.3 below under Operating Expenses.



6.11.5 Consider Cost of Equity as 16% as proposed for the current Control period.

6.12 The Authority also notes that BIAL has claimed Pre-Control Shortfall under Dual Till by adopting the principles of Dual Till. The Authority notes that BIAL has not incurred losses during the Pre-control period, (except for the first year of its operation: 24<sup>th</sup> May 2008 till 31<sup>st</sup> March 2009). The year-wise profit/ loss of BIAL for the period 2008-09 till 2010-11 (the precontrol period) is given below:

**Table 9: Summary of Profits/ losses earned by BIAL for the period 2008-09 to 2010-11, Rs. Crore**

Particulars	Till 2007-08	2008-09	2009-10	2010-11
Total Revenue		322.29	510.87	578.68
Profit before tax		-96.17	78.14	132.5
Taxation		-0.8	-0.40	-0.39
Profit after tax	(53.30)*	-97.03	77.74	132.10
* This figure represents the opening value of retained earnings in the Balance Sheet of the BIAL before the start of operations on 24th May 2008.				

6.13 Based on the yearly profits, the Balance sheet of 2010-11 shows incremental retained earnings of Rs. 209.84 Crores (over and above the figure of retained earnings of Rs. (-) 150.32 Crores as of 31<sup>st</sup> March 2009). The accumulated retained earnings as at 31<sup>st</sup> March 2011, the beginning of the control period is Rs. 59.53 Crores.

6.14 The Authority also notes that GVK Group was not an original shareholder and acquired 43% stake in BIAL during the period December 2009 to December 2010. The airport started its operation on 24<sup>th</sup> May 2008. The Authority understands (based on third party reports) that, a part of this stake in BIAL, worth Rs. 110 Crores, was acquired by GVK Group for an amount of Rs. 1100 Crore.

6.15 While calculating the Pre control period losses, the Authority proposes to make calculations based on taking BIAL as company as a whole giving the return on equity at 16%. This return is based on its calculation of Fair Return on Equity in case of BIAL, as discussed in Para 13 below.

6.16 As can be seen, according to its Balance Sheet, BIAL has made profits in the years 2009-10 and 2010-11 (the 2 years of the pre-control period). These profits have been sufficient to wipe out the losses of its first year of operation namely 2008-09, that is why its Balance sheet as of 31<sup>st</sup> March 2011 shows positive retained earnings of Rs. 59.53 Crores. If calculations are made at 16% ROE, it is found that the position for the last 3 years (2008-09 to 2010-11) is as under:

**Table 10: Reworked Pre-control period shortfall claim – Rs. Crores**

Particulars	2008-09	2009-10	2010-11	Total
Fair Rate of Return on RAB	132.62	164.27	161.39	
Depreciation	113.46	134.40	135.31	
Operating Costs	146.26	163.60	176.10	
Income Tax	0.86	8.78	29.61	
Aggregate Revenue Requirement (Rs. Crore)	393.20	471.06	502.40	

Particulars	2008-09	2009-10	2010-11	Total
Less: Revenue from Operations (Aero Revenue, Non-Aero Revenue and Interest Income)	(315.41)	(474.01)	(559.91)	
Net Shortfall	77.79	(2.96)	(57.51)	
Add: Calculation of Concession Fee and OMSA Fee on the Pre-Control Shortfall	4.34	(0.17)	(3.21)	
Total claim	82.13	(3.12)	(60.72)	18.29
Compounding factor	1.18	1.09	1.00	
Compounded	97.30	(3.41)	(60.72)	33.17

6.17 The shortfall/ profit in each year is brought forward (compounded) to arrive at the future value as of 31<sup>st</sup> March 2011 at WACC for the respective years in the pre-control period. The cumulative result as of 31<sup>st</sup> March 2011 works out to an accumulated shortfall of Rs. 33.17 crores. This means that after the Government's decision to grant adhoc UDF, (First effective 24<sup>th</sup> May 2008 for departing International passengers at Rs. 1070 Per pax (including taxes) and later effective January 2009 for departing domestic passengers at Rs. 260 per pax (including taxes)), BIAL had received ROE at slightly less than 16%.

6.18 As indicated in Para 4.6 above, the Authority has presented the calculations of the different Regulatory Building Blocks in both Single Till and Dual Till. In these calculations, BIAL has requested the Authority to take into account the Pre-Control period loss incurred by BIAL as calculated by it both under Single Till and under Dual Till. However, the Authority is unable to appreciate the submission that though the Airport Operator had all the surplus from Non-Aeronautical Revenue in its hands (Dual Till), BIAL should, nevertheless, be compensated for the accounting loss suffered by it only taking into account the Aeronautical charges (inclusive of UDF) for the pre-control period

6.19 The Authority is examining the Aeronautical tariff proposals for the current control period, both under Single and Dual Till as per the AERAAT Order dated 15<sup>th</sup> February 2013. The Authority has calculated the shortfall based on its assessment of Fair Rate of Return on Equity at 16%, the audited financial statements for BIAL for the period 2008-09 to 2010-11. It has however, kept out the Interest income earned from the Security Deposit received for Hotel Project of around Rs. 20.66 Crores for this period, a treatment that is consistent with its calculation of Aeronautical tariff during the current control period (vide 5.a.iv below). According to calculations made in Table 10 the shortfall thus comes to Rs. 33.17 crores. The Authority proposes to adjust (recoup) this shortfall in the ARR for the first year of the current control period namely in the year 2011-12. This shortfall of Rs. 33.17 crores is thus counted in Authority's proposals for determination of Aeronautical tariffs for the current control period both under Single Till as well as under Dual Till.

**Proposal No 2. Regarding Pre-control period shortfall claim**

**2.a. Based on the material before it and its analysis, the Authority proposes**

- i. To consider Pre-control period shortfall (from 24.05.2008 to 31.03.2011) (inclusive of carrying cost as of 31.03.2011) at Rs. 33.17 Crores.**
- ii. To add this amount of Pre-control period shortfall to the ARR for FY 2011-12 while determining tariffs for aeronautical services for the current control period so as to recoup these losses both under Single Till and Dual Till.**

## 7 Regulatory Building Blocks

7.1 The Authority has analysed and determined the Regulatory Building Blocks for calculation of ARR in respect of BIAL for the current Control Period.

7.2 The ARR for the current Control Period has been calculated based on the following Regulatory Building Blocks with reference to the submissions made by BIAL:

7.2.1 Fair Rate of Return applied to the Regulatory Asset Base (FRoR x RAB)

7.2.2 Operation and Maintenance Expenditure (O)

7.2.3 Depreciation (D)

7.2.4 Taxation (T)

7.2.5 Revenue from services other than aeronautical services (NAR). Revenue from services other than aeronautical services (NAR) is meant to include revenues in the hands of the airport operator from services other than those captured under aeronautical revenue.

7.3 The ARR under Single Till for the Control Period (ARR) will be calculated as under:

$$ARR = \sum_{t=1}^5 (ARR_t) \text{ and}$$
$$ARR_t = (FRoR \times RAB_t) + D_t + O_t + T_t - NAR_t$$

where

7.3.1 t is the Tariff Year in the Control Period

7.3.2  $ARR_t$  is the Aggregate Revenue Requirement for year t

7.3.3 FRoR is the Fair Rate of Return for the control period

7.3.4  $RAB_t$  is the Regulatory Asset Base for the year t

7.3.5  $D_t$  is the Depreciation corresponding to the RAB for the year t

7.3.6  $O_t$  is the Operation and Maintenance Expenditure for the year t, which include all expenditures incurred by the Airport Operator(s) including expenditure incurred on statutory operating costs and other mandated operating costs

7.3.7  $T_t$  is the Taxation for the year t, which includes payments by the Airport Operator in respect of corporate tax on income from assets/ amenities/ facilities/ services taken into consideration for determination of ARR for the year t

7.3.8  $NAR_t$  is the Revenue from services other than aeronautical services for the year t

7.4 In case of Dual Till, the calculation of ARR differs as cross subsidization from Revenue from services other than aeronautical services (Non-Aeronautical Revenue (NAR)) will not be considered. Other than NAR, other building blocks will remain in the formula, however their values will change as the methodology for determination of these blocks will be different. Further the Regulatory Asset

Base (RAB) will be considered corresponding to those assets, which are used for providing aeronautical services. In other words the assets being used for providing services other than aeronautical services will be excluded from RAB. Accordingly, the depreciation and Operation & Maintenance Expenditure will be considered for activities pertaining to provision of aeronautical services. Thus, the ARR for the current Control Period will be determined based on the following Regulatory Building Blocks components (for Dual Till):

7.4.1 Fair Rate of Return applied to the Regulatory Asset Base (FRoR x RAB)

7.4.2 Operation and Maintenance Expenditure (O)

7.4.3 Depreciation (D)

7.4.4 Taxation (T)

7.5 The ARR under Dual Till for the Control Period (ARR) will be calculated as under:

$$ARR = \sum_{t=1}^5 (ARR_t) \text{ and}$$
$$ARR_t = (FRoR \times RAB_t) + D_t + O_t + T_t$$

7.6 The Authority's examination of each of the building block in respect of Bengaluru International Airport is presented in the subsequent sections.

## 8 Allocation of Assets– Aeronautical / Non-Aeronautical

### (a) BIAL's Submission on Asset Allocation

8.1 BIAL has submitted MYTP under both Single Till and Dual Till Mechanism. Accordingly the Operator has, under Dual Till proposed segregation between the Aeronautical Assets and Non-Aeronautical Assets.

8.2 With respect to segregation of Assets as Aeronautical and Non Aeronautical, BIAL has submitted as follows:

*“The bifurcation of historical values of fixed assets and costs in Aero and Non-Aero is based on the Auditor’s certificate issued after conducting agreed upon procedures. A copy of the certificate has been submitted earlier. On the same basis, the projected fixed assets and costs are bifurcated to estimate the future Aero and Non-Aero Assets.*

*The Aeronautical Assets, Non-Aeronautical Assets, Aeronautical Services and Non-Aeronautical Services are as defined under Clause 1.1 and Clause 1.2 of the certificate submitted earlier”*

8.3 Extracts from the certificate given by Price Water House Coopers (PWC), in October 2008 to MoCA which has been submitted by BIAL, detailing the concept and methodology of bifurcation are as given below:

*“Concept Document*

*Definitions as per Company policy*

*“Aeronautical Assets” shall mean those assets which are necessary or required for the performance of aeronautical services for earning Aeronautical Revenue which is defined below and such other assets as an Airport company procures in accordance with the written directions of the GOI for or in relation to provision of any reserved activities.*

*“Aeronautical Services” means the provision of the following facilities and services:*

*Provision of flight operation assistance and crew support systems;*

*Ensuring the safe and secure operation of the Airport, excluding National Security Interest;*

*Movement of parking of aircraft and control facilities;*

*General maintenance and upkeep of the Airport;*

*Rescue and Fire Fighting services;*

*Movement of staff and passengers and their inter-change between all modes of transport at the Airport;*

*Aerodrome control services;*

*Airfield;*

*Airfield lighting;*

*Airside and landside access roads and forecourts including writing, traffic signals, signage and monitoring;*

*Common hydrant infrastructure for aircraft fuelling services by authorized providers;*

*Apron and aircraft parking area;*

*Apron control and allocation of aircrafts stands;*

*Arrivals concourses and meeting areas;*

*Baggage systems including outbound and reclaim;*

*Bird scaring*

*Check-in concourse;*

*Cleaning, heating, lighting and air-conditioning public areas;*

*Customs and immigration halls;*

*Emergency services;*

*Facilities for the disabled and other special needs people;*

*Flight information and public-address systems;*

*Water drainage;*

*Guidance systems and marshalling;*

*Information desks;*

*Inter terminal transit systems;*

*Lifts, escalators and passenger conveyors;*

*Loading bridges;*

*Lost property;*

*Passenger and hand baggage search;*

*Piers and gate rooms;*

*Policing and general security;*

*Infrastructure/Facilities for Post Offices;*

*Infrastructure/Facilities for Public telephones;*

*Runways;*

*Signage;*

*Taxiways;*

*Toilets and nursing mothers room;*

*Waste and refuse treatment and disposal;*

*X-Rat service for carry on and checked-in luggage;*

*VIP / Special lounges; and*

*Any other services deemed to be necessary for the safe and efficient operation of the Airport.*

*“**Airport Charges**” shall mean Airport Charges as defined in Articles 10 clause 10.2 of the concession agreement.*

*“**Regulated Charges**” shall mean regulated Charges as defined in Schedule of the concession agreement dated July, 2004*

*“**Non-Aeronautical Assets**” shall mean all assets required or necessary for the performance of Non-Aeronautical Service at the Airport as defined below.*

*“**Non-Aeronautical Services**” shall mean the following facilities and service:*

*Aircraft cleaning services;*

*Airline Lounges;*

*Cargo handling;*

*Cargo terminals;*

*Operation and maintenance of passengers boarding and disembarking systems;*

*Ground handling services*

*Hangers*

*Heavy maintenance services for aircraft*

*Observation terrace*

*Banks/ATM*

*Bureaux de change*

*Business center*

*Conference center*

*Duty free sales*

*Flight catering services*

*Flight consolidators/forwarders or agents*

*General retail shops*

*Hotel/Motels*

*Hotel reservation services*

*Line maintenance services*

*Local rentals*

*Logistics centers*

*Messenger services*

*Porter services*

*Restaurants, bar and other refreshment facilities*

*Special Assistance services*



*Tourist information services*

*Travel agency*

*Vehicle fueling services*

*Vehicle rental*

*Vehicle parking*

*Vending machine*

*Warehouses*

*Welcoming services*

*Other services related to passenger services at the airport, if the same is a non-aeronautical asset.*

**“Common Assets”** shall mean all assets not specifically identifiable to Aeronautical Assets & Non-Aeronautical Assets.

**“Aeronautical Revenue”** shall mean revenue from all regulated charges levied at the Airport i.e., Landing Fees, Parking and Housing Fees, PSF (Facilitation) and User Department fees.

**“Non-Aeronautical Revenue”** shall mean all revenue streams other than Aeronautical Revenue streams.

**Classification of fixed assets into Aeronautical and Non- Aeronautical assets**

The following is the key used for the bifurcation of common assets into Aeronautical and Non – Aeronautical assets.

<i>Sl. No</i>	<i>Key for Bifurcation</i>	<i>Basics for key</i>
<i>1</i>	<i>Landscaping</i>	<i>Airside landside landscaped area.</i>
<i>2</i>	<i>Power</i>	<i>Estimated Demand Ratio between Aeronautical Services and Non Aeronautical services as provided by the Facilities Department.</i>
<i>3</i>	<i>Revenue</i>	<i>Projected Revenue (for Aeronautical Services and non-Aeronautical Services) as per the budget for the year 2008-09 as approved by the Board in the 36<sup>th</sup> Board Meeting held on 25<sup>th</sup> April 2008.</i>
<i>4</i>	<i>Water</i>	<i>Estimated Demand Ratio between Aeronautical and Non Aeronautical Services as provided by the Facilities Department.</i>

<i>Sl. No</i>	<i>Common Asset Group</i>	<i>Location/Description</i>	<i>Key used</i>
1	<i>Air Conditioning, Office Equipment, Security Fencing &amp; Airport</i>	<i>All</i>	<i>Revenue</i>
2	<i>Building</i>	<i>ATC Block</i>	<i>Revenue</i>
		<i>Powerhouse North/ Power Substation</i>	<i>Power</i>
		<i>Terminal Building</i>	<i>Revenue</i>
		<i>Waste Center, Booster Pump House, Potable Water Pump House, Sewage treatment Plant, Raw Water Pump House, Rain Water Harvesting</i>	<i>Water</i>
		<i>Landscaping</i>	<i>Landscaping</i>
3	<i>Communication Equipment</i>	<i>Corporate Office</i>	<i>Revenue</i>
4	<i>Electrical installation</i>	<i>ATC Block &amp; Terminal Building</i>	<i>Revenue</i>
		<i>Main Power Station, Powerhouse North</i>	<i>Power</i>
		<i>Raw Water Pump House</i>	<i>Water</i>
5	<i>Lighting &amp; Beacons</i>	<i>Terminal Building, ATC Building</i>	<i>Revenue</i>
		<i>Substation and Power House</i>	<i>Power</i>
		<i>Raw Water Pump House</i>	<i>Water</i>
6	<i>Powerhouse Equipment</i>	<i>All</i>	<i>Power</i>
7	<i>Roads</i>	<i>Road access</i>	<i>Revenue</i>

<i>Sl. No</i>	<i>Common Asset Group</i>	<i>Location/Description</i>	<i>Key used</i>
8	<i>Safety and Security Equipment</i>	<i>Terminal Building</i>	<i>Revenue</i>
9	<i>Software and Program licenses</i>	<i>Software – Power Supply Equipment etc</i>	<i>Power</i>
		<i>Auto CAD 2008, Com Software – network license</i>	<i>Revenue</i>
10	<i>Water Management System</i>	<i>All</i>	<i>Water</i>

“

8.4 Based on the above, the % segregation adopted by BIAL, in the Business Plan on assets proposed to be capitalised during the current control period are as follows:

**Table 11: Asset split % adopted by BIAL for future capital expenditure**

<b>Asset Description</b>	<b>% considered as Aero</b>
Apron Extension	100%
Terminal 1 Expansion	82%
Other Projects	82%
<b>Maintenance Capital Expenditure</b>	
Airfield Pavement	100%
Fencing and Compound Wall	80%
Landscaping	80%
AFL System	80%
Aircraft stand equipment	100%
Perimeter Roads	80%
Drainage	80%
Terminal Building	80%
Electrical and Electronic System	80%
Special Equipment (Lift, Escalator, PBB etc)	80%
Mechanical System (HVAC, FF etc)	80%
Furnishing	80%
Airfield Building	100%
Landside Building	80%
Road Access Road & Parking areas	80%
Landscaping	80%

Asset Description	% considered as Aero
Access to Highway	80%
Street and Parking area lights	80%
Drainage Systems	80%
Equipment for Power House	80%
Ring Feeder / Cable Network	80%
DG Sets	80%
Water Supply	80%
Waste Water Network and Plant	80%
Storm Water disposal and drainage	80%
Vehicles and Equipments	80%
Misc. Capex	80%

8.5 Based on the above approach, BIAL has segregated the Aeronautical and Non-Aeronautical Assets for the current control period. The overall ratio between Average Regulatory Asset Base (“RAB”) of Aeronautical Assets and Average RAB of Total Assets (i.e. Aeronautical and Non-Aeronautical Assets) as computed by BIAL for each year of the control period, is summarised below:

**Table 12: Overall Aeronautical assets as a % of Total Assets**

In%	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB of Aeronautical Assets as %age of Total Assets	81.47%	82.09%	82.42%	82.31%	82.37%
Total Average RAB	1569.83	1579.54	2395.22	3148.27	3063.61

**(b) Authority’s examination of BIAL’s Submission on Asset Allocation**

8.6 The Authority has noted the above submission of BIAL on the allocation of assets into Aeronautical and Non-aeronautical categories. The Authority also notes that the auditor’s certificate highlights that:

*“... We have found the basis of allocation of assets, costs, and revenue into Aeronautical and Non-Aeronautical to be reasonable, except for Operation and Maintenance of passenger boarding and disembarking systems (aerobridge), which has been classified under Non-Aeronautical. ...”*

8.7 The Authority proposes to calculate aeronautical tariffs under Dual Till based on the asset allocation indicated by BIAL (asset allocation is not relevant for Single Till). It also proposes to commission an independent study to assess the reasonableness of this allocation and to consider the conclusions thereof at the time of the aeronautical tariff determination in the next control period as may be relevant.

8.8 The Authority proposes to consider Aerobridge charges as Aeronautical Revenues.

**Proposal No 3. Regarding Asset Allocation (Aeronautical / Non Aeronautical)**

**3.a. Based on the material before it and its analysis, the Authority proposes**

- i. To consider the allocation of assets as submitted by BIAL (Refer Table 12) for computation of ARR under Dual Till for the current control period.**
- ii. To commission an independent study to assess the reasonableness of the asset allocation submitted by BIAL and to consider the conclusions thereof at the time of the aeronautical tariff determination in the next control period as may be relevant.**

## 9 Future Capital Expenditure including General Capital Expenditure

### (a) BIAL's submission on Future Capital Expenditure

9.1 Project-wise details of the costs proposed to be added to RAB, during the Control Period and the date of capitalization, as seen from the Business Model is as given below:

**Table 13: Details of Capital Expenditure Projects proposed by BIAL to be added to RAB during the current control period – Rs. Crores**

Project	Date of Capitalisation	Basic Cost and charges	Financing allowance	Total cost
Other Projects	31-Mar-12	63.11	3.43	66.54
Apron Extension	31-Mar-13	118.05	10.41	128.46
T01 Expansion	30-Sep-13	1383.31	215.63	1598.94
Expansion Projects Capitalised				1793.94
Maintenance Capex Projects	31 <sup>st</sup> March 2012	3.43	0.00	3.43
	31 <sup>st</sup> March 2013	70.41	0.00	70.41
	31 <sup>st</sup> March 2014	126.36	0.00	126.36
	31 <sup>st</sup> March 2015	142.97	0.00	142.97
	31 <sup>st</sup> March 2016	78.38	0.00	78.38
Maintenance Capital Expenditure				421.54
Total Capitalisation		1986.01	229.47	2215.48

9.2 Financing allowance has been computed at the rate of debt proposed by BIAL for the respective years on the Capital expenditure incurred, which varies from 11.5% to 13.5%, as submitted by BIAL. (Authority's assessment on the Cost of Debt is as detailed in Para 12 below)

9.3 During discussions BIAL explained that that this amount proposed to be added to RAB will be different from the Interest during Construction and charges that will be added to the asset cost for the purpose of depicting the same in the Financial books of accounts, due to the different methodology and mechanism of computing the Interest during Construction and the Financing Allowance. Details of asset values proposed to be capitalized, in Financial books, as against the above projects, as can be seen from the Business Model submitted is given below:

**Table 14: Details of Costs proposed to be capitalised in Financial Accounts as per BIAL – under Single Till - Rs. Crores**

Project	Date of Capitalisation	Basic Cost and charges	Interest Capitalised	Total cost
Other Projects	31-Mar-12	63.11	0.00	63.11
Apron Extension	31-Mar-13	118.05	3.02	121.06
T01 Expansion	30-Sep-13	1383.31	95.38	1478.69
Expansion Projects Capitalised				1662.86
Maintenance Capex Projects	31st March 2012	3.43	0.00	3.43

Project	Date of Capitalisation	Basic Cost and charges	Interest Capitalised	Total cost
	31st March 2013	70.41	4.38	74.78
	31st March 2014	126.36	0.77	127.13
	31st March 2015	142.97	6.15	149.12
	31st March 2016	78.38	4.51	82.89
Maintenance Capital Expenditure				437.34
Total Capitalisation		1986.01	114.19	2100.20

9.4 BIAL has stated that it has carried out Consultation with various stakeholders for the Terminal 1 expansion activity which commenced in August 2011. Following are the details of the consultations carried out, as submitted by BIAL.

**Table 15: Summary of Stakeholder consultations carried out by BIAL for the proposed Capital Expenditure**

Date	Nature of Meeting
6 <sup>th</sup> May 2010	Forecast Workshop
6 <sup>th</sup> August 2010	Terminal Expansion – Airline Consultation
15 <sup>th</sup> July 2011	Terminal Expansion – Airline Workshop and Stakeholder Sign off
27 <sup>th</sup> Sep 2010	Smile Bengaluru – City Connect Campaign

9.5 BIAL, in its revised MYTP submission had given the details of key Maintenance Capex expenditure as follows:

**Table 16: Details of Key Maintenance Capital Expenditure Projects as submitted by BIAL - Rs. Crores**

S. No.	Activity Name	Cost proposed to be incurred in First Control Period
1	Disabled aircraft removal equipment	8
2	Integrated crisis center cum Haj terminal	6
3	Airside infrastructure development	5.84
4	Terminal area infrastructure development	6.72
5	Extension of Kerbside of Terminal 1	35

9.6 The Authority noted that the total Maintenance Capital Expenditure Projects proposed to be executed as per the Business Plan totalled to approx. Rs. 421 Crores (Refer Table 13) of which details were provided, as part of MYTP submission, only for Rs. 61.56 crores as given in Table 16. Further to query raised by the Authority on the same and after repeated follow-ups, BIAL has submitted the details of Maintenance Capital Expenditure Projects on 15<sup>th</sup> May 2013 as follows:

**Table 17: Detailed break-up of the Maintenance Capital Expenditure submitted by BIAL**

Annexure 1				
Dept	Particulars (Amt in Rs. Crore)	2013-2014	2014-2015	2015-2016

Annexure 1				
Dept	Particulars (Amt in Rs. Crore)	2013-2014	2014-2015	2015-2016
E&M	Airfield Pavement	0.2	29.1	12.5
E&M	Fencing & Compound Wall	-	-	0.5
E&M	Landscaping	3.0	-	-
E&M	AFL System	0.3	-	0.5
E&M	Aircraft Stand Equip.(Apron Lights 400 Hz etc)	0.1	-	0.6
E&M	Perimeter Roads	-	-	0.2
E&M	Drainage	-	-	-
E&M	Terminal Building	1.6	0.5	0.6
E&M	Electrical & Electronic System	-	-	0.2
E&M	Spl. Equipment(Lifts, Escalators, PBB etc)	0.2	0.2	0.2
E&M	Mechanical System (HVAC, FF etc)	0.0	0.2	0.7
E&M	Furnishing	-	0.5	-
E&M	Airfield Buildings	0.2	1.2	0.4
E&M	Landside Buildings	0.3	0.2	-
E&M	Road Access Road & Parking Areas	6.0	-	-
E&M	Landscaping	0.4	-	-
E&M	Access to Highway	-	0.5	-
E&M	Street & Parking area lights	0.1	-	0.1
E&M	Drainage systems	0.1	-	0.1
E&M	Equipment for Power Houses	-	-	0.5
E&M	Ring feeder / Cable Network	-	-	-
E&M	DG Sets	-	0.8	0.8
E&M	Water supply	-	0.4	-
E&M	Waste Water Network and Plant	0.1	-	0.3
E&M	Storm water Disposal / Drainage	0.1	-	-
E&M	Vehicle & Equipments	0.5	0.7	9.0
	Total	13.1	34.1	27.0
	WPI - Capex	1.1	1.1	1.1
	Total (incl. WPI - Capex)	14.1	37.9	30.8

Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
1	Operations	EXPANSION/UP GRADATION OF DEPARTURE HALL TOILET AND TOILET FOR ARRIVAL PASSENGER	1.8		
2	Operations	MEP, structure, demolition, barricading etc	0.7		



Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
3	Operations	ADDITIONAL SEPARATE ENTRY/EXIT DOOR FOR TROLLY MOVEMENT	0.0		
4	ICT	Check-in (peripherals) - Refresh of the balance hardware to make all counters identical in performance	1.3		
5	Operations	LIFE STYLE SEATING	4.2		
6	Operations	WHITE COLOR 3M VINYL ABOVE CHECK IN COUNTER INCLUDES DISMANTLING AND REFIXING	0.2		
7	Operations	INTRODUCTION OF ORANGE COLOR 3M VINYL FILM BEHIND GREEN GLASS FOR CHECK IN WALL INCLUDES DISMANTLING AND REFIXING	0.5		
8	Operations	WHITE COLOUR 3M VINYL FILM ON EXISTING GLASS FASIA INCLUDES DISMANTLING AND REFIXING - ARRIVAL HALL	0.2		
9	Operations	GREEN GLASS TO BE REPLACED WITH OFF WHITE COLOR 3M VINYL FILM FOR ALL COLUMNS INCLUDING DISMANTLING AND REFIXING.	1.8		
10	Operations	Vertical Portal 1 no.	0.7		
11	Commercial	BULKHEAD TO MATCH WITH T1E	6.4		
12	Commercial	CAPITAL, PORTAL, GRILLS TO BE DONE TO HIDE FRESH AIR AND EXHAUST ARRANGEMENT FOR F&B'S	2.5		
13	Commercial	GRANITE FLOORING TO BE REDONE INCLUDING SCREED	12.9		
14	Commercial	CURVE WALL DESIGN EXCLUDING ART WORK	0.3		
15	Commercial	RELOCATING THE IT ENTRANCE	0.0		
16	Commercial	DRY WALL PARTITION	2.3		
17	Commercial	INTRODUCTION OF GLASS LIFT LEVEL 1 TO LEVEL 2	0.3		
18	Commercial	MEP, structure, demolition, barricading etc	6.1		
19	Operations	MEP, structure, demolition, barricading etc	0.7		
20	Operations	DISMANTLING AND RELOCATING OF ONE SWING GATE PARTITION	0.0		
21	Operations	ADDITIONAL NEW FOLDING GATE GLASS PARTITION	0.1		
22	Operations	BIAL DAILY OPERATIONAL OFFICE INTERIORS	0.6		
23	Operations	AUTHORITY & ICT OFFICES AREA NEAR ARRIVAL CORRIDOR and AOCC	1.2		
24	Operations	CLOSURE OF EXISTING EXIT DOORS AND ADDING TICKETING OFFICES INCLUDES EXTERIOR,INTERIOR GLASS	0.0		

Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
		PARTITION,DOORS & MODULAR FURNITURE			
25	Operations	MEP, structure, demolition, barricading etc	3.1		
26	ICT	Rebuilding services - FAS/TMRS/WiFi/ In-building 2g/3g services for Mobile/ IP Ports	1.9		
27	Commercial	PA rebuilding - for Terminal enhancement.	0.9		
28	Operations	NEW CHARGING COUNTER NEAR BOARDING GATE	0.1		
29	Operations	NEW BOARDING COUNTERS TO MATCH WITH T1E	0.8		
30	Operations	SIGNAGES CHANGES - LEV -0/1	2.5		
31	Operations	Millwork package _ loose furniture	1.3		
32	Operations	Interior changes	4.8		
33	Operations	MEP, structure, demolition, barricading etc	4.2		
34	Operations	Construction and MEP, structure, demolition, barricading etc	1.0		
35	Operations	Integration of existing lighting with expansion scheme	3.3		
36	Operations	CHECK IN COUNTERS -ADD EMPERADO MARBLE ON FRONT FACE.	0.3		
37	Operations	LOW CEILING ABOVE CHECK-IN COUNTERS TO BE REDONE	0.2		
38	Operations	MEP, structure etc in check in and arrival hall	0.2		
39	Operations	VERTICAL FINISHES (HPL/SGL)- PASSENGER AREA	1.5		
40	Operations	Art Work	1.6		
41	Operations	3rd baggage claim belt on International arrivals	7.6		
42	Commercial	Development of Plaza area	35.0		
43	Commercial	Forecourts & landscaping requirements - Various line items consolidated	80.0		
44	Operations	Consultancy for Runway 2 airspace study	2.5		
45	ICT	B2C-www.bengaluruairport.com-social media integration/ E-commerce	1.7		
46	Corporate	Passenger vehicles for employees	1.0		
47	Operations	Automated Passenger Queue Wait Time System	1.0		
48	ICT	Smart Airport - Vacuum based Baggage Handling	1.0		
49	ICT	Technology refresh- Airport IT Systems-AODB Server	1.0		
50	ICT	Technology refresh- Tetra Radios provided to Customers	1.0		

Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
51	ICT	New Servers for New applications-Pax tracker/ ITSM Solution / EPOS or Virtualisation platform, 6 nos	1.0		
52	Operations	Design & Engineering for Hajj	0.9		
53	E&M	Alternate Access road to Alpha taxi track to V Road	0.7		
54	E&M	Providing Infrastructure work in and around the BIAL premises - CSR	0.5		
55	Operations	Airport Capacity Simulation System	0.5		
56	E&M	Management vehicles	0.5		
57	E&M	Replacement Follow-Me vehicles 3 Nos. (Scorpio Getaway or Similar)	0.5		
58	E&M	Closing of the Breached Boundary walls	0.4		
59	E&M	Development of fire training pit area to cover 100 meters drive around area	0.4		
60	ICT	Network-Cisco Routers for Customers	0.4		
61	ICT	IPV6-New Network Hardware compliant with IPV6	0.4		
62	ICT	Technology refresh- SAN Switches	0.4		
63	E&M	Tow vehicles for Landside Traffic	0.3		
64	E&M	Suction & Jetting Machine	0.3		
65	ICT	Enterprise Apps- Mobility Apps for smart phones	0.3		
66	ICT	Enterprise Apps-Marketing and BI for Aviation mktg	0.3		
67	ICT	TMRS Radios - BIAL Internal -E & M, Landside Traffic, ARFF	0.3		
68	ICT	Technology refresh- Laptops	0.2		
69	E&M	Procurement of the signage boards at the airfield are for an improved guidance to the aircraft.	0.3		
70	E&M	Provision of VIP Terminal Gate	0.3		
71	E&M	Permanent Watch towers	0.2		
72	Operations	Infrastructure- VDGS-SNI, 17 nos	0.2		
73	ICT	Technology refresh- Enterprise Servers	0.2		
74	ICT	Microsoft- CAL for End users	0.2		
75	Commercial	Long Range RFID card reader for control taxi revenue accounting	0.2		
76	E&M	Procurement of Mahindra 4X4	0.2		
77	ICT	Web sense- Security Gateway	0.2		
78	ICT	Laptops for check in Desk	0.2		

Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
79	E&M	Relocation of E&BCM office with furniture in AAB	0.2		
80	E&M	Ticketing Counter false flooring replacement/servicing	0.2		
81	ICT	New Laptops-E&M, ARFF, AEOC, Security	0.2		
82	Operations	Fire proximity suit (Two piece , 10 Nos)	0.2		
83	ICT	TMRS Radio coverage beyond perimeter-repeaters	0.2		
84	E&M	Storage racks for material and records for E&M	0.2		
85	Operations	Vehicle Four Wheel drive	0.2		
86	ICT	Enterprise Apps- CPM Enhancement	0.2		
87	ICT	Network- WIFI Aruba Outdoor Access Points	0.2		
88	ICT	TMRS Radios - Customers	0.2		
89	E&M	BHS Belt Joining Machine & Belt Lacing Machine With Hinge Pins	0.1		
90	Operations	Procurement of Life Support Equipment like Evacuation Chairs (5 nos), Spine Boards (20 Nos), Fire Blank (10) for PTB, & First Aid Box for all Occupied BIAL Buildings (50 Nos)	0.1		
91	E&M	Escalator / Travellator Cleaning Machine	0.1		
92	E&M	Procurement of Jeep for fire prevention wing Scorpio/ Bolero or equivalent	0.1		
93	Landscaping	Sit & Ride Lawn Mover-1 Oleo mac	0.1		
94	Operations	Relocation of EBCM office and restructuring of safety office	0.1		
95	Operations	BA Facemask with strap	0.1		
96	Corporate	Additional SAP PMS Licenses-65 ESS & 30 MSS Licenses	0.1		
97	E&M	Temporary Watch towers (Movable)	0.1		
98	E&M	Potable water connection & wastewater transfer to Parking - 1 Café	0.1		
99	ICT	Microsoft-System center 2013	0.1		
100	Corporate	Customised Software for Contracts Compliance Management with respect to labour statutory compliance	0.1		
101	Corporate	e-File Management System/e-Document Management System	0.1		
102	E&M	Providing the Medicinal & aromatic plants in & around STP as per KSPCB & MoEF	0.1		
103	E&M	Stone Pitching work for existing Kuccha drain from dump yard to South side boundary wall.	0.1		
104	E&M	Installation of APFC panel for PMCC 1 of	0.1		

Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
		HVAC system to improve the Power Factor			
105	Landscaping	Indoor Plants for PTB	0.1		
106	Landscaping	Edging Planters	0.1		
107	Operations	Integrated Laser Speed Gun	0.1		
108	Operations	Portable Fire Extinguishers	0.1		
109	Operations	Digital Grid map	0.1		
110	ICT	Passive Network Cabling	0.1		
111	Corporate	SAP Product-Technical Upgrade to EHP6	0.1		
112	Operations	Office Chairs	0.1		
113	Operations	Filing cabinets for GR , L& F and Operations	0.1		
114	ICT	Infrastructure- VDGS Redundancy module	0.1		
115	E&M	Relocation of Hatti Kappi & Chai Point	0.1		
116	Operations	Procurement of AED for BIAL Buildings [Total 6 units in this Budget; This amount will be used together with the deferred amount of Rs. 550000/- from FY 2012-13. Thus total 10 units @ 1.2 lakh per unit ]	0.1		
117	Operations	Fire Resistant turnout Suits	0.1		
118	E&M	Follow Me mounted bird scaring hooter	0.1		
119	E&M	Speed Governors for Vehicles and Equipments as per DGCA regulation	0.1		
120	E&M	Installation Paver blocks for all outdoor RMUs yards.	0.1		
121	ICT	IP PABX-IP Phones-Customers	0.1		
122	ICT	IP PABX-IP Phones-Enterprise	0.1		
123	E&M	Master Tools Set , Meters & Pumps (Master Tools,Thermohygrometer, Infrared Surface Dewatering pump)	0.1		
124	Corporate	Complete kitchen renovation	0.1		
125	E&M	Multimeter / Clamp Meter and Power tools & equipments for general maintenance for BIAL Common electrical & Civil use	0.1		
126	E&M	Refabricating of the IOTSL gate with a new design and better height as per the regulatory requirement(Design can be decided later)	0.1		
127	E&M	Enhanced Follow Me Display System	0.1		
128	E&M	Providing re-carpeting of floor area inside the dump yard	0.1		
129	ICT	Network-HP Open View Licences	0.1		
130	ICT	Mobile Infrastructure-To accommodate new	0.1		

Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
		operators if any			
131	ICT	Mobile replacement for Duty Managers	0.1		
132	ICT	Programming Kit for PLC/SCADA -Infra structure maintenance-Hardware	0.1		
133		Various miscellaneous items	0.9	0.9	
134	ICT	Annual Capex (towards servers, network, internet infrastructure, cables, mobile infrastructure & etc..)		18.0	20.0
135	ICT	Check in and Boarding Services - Self-Boarding ( SBG)		4.3	-
136	ICT	Automated Baggage drop services		4.0	-
137	ICT	Technology refresh - Towards Servers-Windows/ Unix, Network Infrastructure - G		3.0	3.0
138	Admin	Cafeteria expansion		1.0	-
139	Admin	Cafeteria furniture & fixtures		-	0.2
140	SAP	ESS & MSS license Purchase		0.2	-
141	SAP	E-Procurement software & implementation		0.4	-
142	SAP	BI-BO Software & implementation		0.6	-
143	SAP	HR Portal self-service functionality implementation		0.2	-
144	SAP	SAP PS implementation		0.2	-
145	SAP	ESS & MSS license Purchase		-	0.2
146	SAP	mySAP ERP license purchase		-	0.2
147	SAP	Mobile applications & SAP Integration		-	0.2
148	SAP	Various others		-	0.1
149	Operations	Passenger Baggage Trolleys		2.8	2.8
150	Operations	SMS Software and facilities for online safety training modules.		0.3	0.3
151	Operations	Scorpio (4X4 driven) vehicle.		0.1	-
152	Operations	Emergency Escape stair		4.0	-
153	Operations	Rescue equipment and triage store accessories		-	1.0
154	Operations	22.5 T Low Pressure Bag for Narrow Body Aircraft (2 Set)		1.6	-
155	Operations	LP BAGS 0.5 BAR 30 TONS for FWD and AFT Fuselage Lift (2 Set)		0.7	-
156	Operations	Tethering Set Wide Body Aircraft (1 Set)		0.3	-
157	Operations	Debugging Kit for N/B and W/B Aircraft (1 Set)		0.2	-
158	Operations	Q-Mat Ground Support Panels-45 Nos.(360 Sq.mtrs.)		1.4	-

Annexure 2					
Sl. No	Dept	Description (Amt. in Rs. Crore)	2013-14	2014-15	2015-16
159	Operations	Fuselage MULTISLING Full Range (1 Set)		-	0.5
160	Operations	Container for Storage of Equipment (1 Set)		-	0.3
161	Operations	Fuselage Trailer (1 Set)		-	1.7
162	Operations	Construction of Integrated Crisis Center cum Hajj Terminal		7.5	-
163	Commercial	Traffic & Directional Signage		0.1	0.1
164	Commercial	Traffic Management Supplies		0.1	0.1
165	Commercial	Office for landside team		0.5	-
166	Commercial	Bus stops across airport for operating shuttle services		1.0	-
167	Commercial	KSRTC & KSTDC bus stop / Lounge / F&B & Left Luggage Facility		2.0	-
168	Commercial	Public Toilets		1.0	-
169	Commercial	Truck holding area		2.0	-
170	Commercial	P7 expansion - F&B		0.1	-
171	Commercial	Flee market project		0.5	-
		Total	220.8	58.8	30.6

9.7 During the first control period, following other Projects are also proposed to be carried out by BIAL, which will be carried forward as works in progress at the end of the current control period and are proposed to be capitalized in the ensuing control period (2016-17 to 2020-21), as seen from the Business Model and submissions made.

**Table 18: Details of Projects proposed to be commenced and in Work-in-Progress stage at the end of First Control period - Rs. Crore**

S. No.	Project details	Cost carried as CWIP in books	Proposed Year of Capitalisation
1	Second Terminal - I phase	1039.61	31-Mar-18
2	Runway 2, Taxiway & Apron - I phase	523.08	31-Mar-18
3	Runway 2, Taxiway & Apron - II phase	304.23	31-Mar-18
4	Forecourt roadways & landside development - I Phase	186.05	31-Mar-18
	TOTAL	2052.98	

9.8 BIAL's submission on the necessity and the details of projects being carried out in the control period are reproduced below:

*“Apron extension - This involves construction of parking stands for aircrafts on the western side of the airfield, in addition to the 42 Code E stands constructed earlier. These additional stands are being built to meet the increase in demand for night parking stands at BIA.*

The demand for overnight parking is expected to grow to 38 stands for 42 aircraft by end of 2012 as the economic situation improves. This translates to a total demand for 65 apron stands including overnight parking, operations, diversions and contingency, as given below.

<b>Particulars</b>	<b>Total Stands</b>
Current demand from Indian Carriers for overnight parking	32
Medium term demand for overnight parking	10
Current demand for international operation	13
Future demand for international operation	6
Requirement of non-scheduled, VIP, delay/diversion, technical grounding etc.	2
Requirement of emergency operation	2
<b>Total estimated demand</b>	<b>65</b>

In May 2010, BIAL had entered into a contract for construction of the additional stands. The total investment estimated for the apron extension and related works is Rs.120 Crores. The construction is proposed to be completed in phases by Q4 – 2012-13. Out of the additional 24 Code C/10 Code E stands in the West Apron, 05 temporary stands were operationalized on 30<sup>th</sup> Sept 2011 and 4 stands operationalized on 31<sup>st</sup> March 2012. The remaining stands are likely to be handed over by Q4 – 2012-13.

#### **Projects proposed to be executed - Basis**

The company has also estimated the various Capital Expenditure Projects that need to be executed to keep pace with the growth in Passenger, Cargo and ATM estimates, during the first control period and has projected the costs to be incurred in line with the timing of the Capital Expenditure. Airport development activities are projected based on the Jacobs Consultancy's Master Plan Update report dated August 2011, submitted earlier by us in September 2011, which sets out the vision for BIAL for the next 20 years and the strategy to translate the vision into facilities development, necessitated based on the changes in demand, Economy and the aviation Industry.

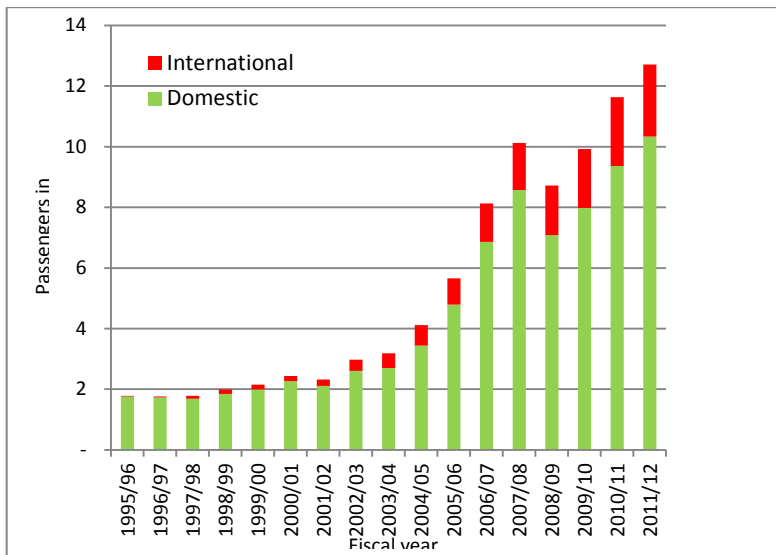
A brief overview of different Projects proposed to be executed during the first control period is detailed below:

Terminal 1 (T1) expansion - Bangalore has experienced rapid growth in passenger volumes, and will continue to realize significant growth over the 20-year planning period. In 2011/12, 12.7 million passengers (mppa) traveled through Bangalore, versus 1.8 million



annual passengers in 1995/96. The year-on-year growth for 2010 to 2011 represents an annual growth rate of 9%, and CAGR of 14% per year for the past 15 years. International traffic has been the fastest growing segment, increasing from a reported 1.2 percent of total passengers in 1995/96 to nearly 20 percent currently. Growth has been particularly robust since 2002/03, coinciding with ongoing deregulation of civil aviation in India, as illustrated in Figure 1.1 below.

FIGURE 1.1



The expansion of the existing Terminal 1 has been designed to enhance the operational performance in order to handle, inter-alia, the increase of passenger traffic from the current 12.7 million passengers in 2011-12, upto approximately 17 – 20 million passengers per annum, until the second terminal (T2) is planned to be operational.

BIAL commenced the next phase of development, which is the substantial expansion of the existing T1. This expansion will cater to the expected growth of passengers, until the second Terminal (T2) is planned to be operational, as illustrated in Figure 1.2. This is based on the current projected forecast demand for the next 4 to 5 year period, which is the estimated time period for planning, design and construction of the new T2.

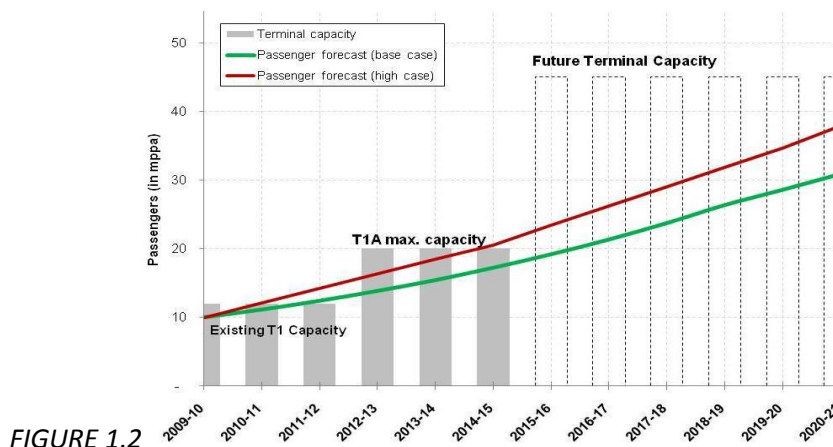


FIGURE 1.2

*Source: Landrum & Brown Traffic Report dated August 2010*

*The terminal expansion program includes an extension by three grids (72m x 24m) on the east and west sides of T1, East pier concourse, modifications to the existing T1, airside apron expansion, ancillary facilities, and T1 kerb side and forecourt modifications.*

*The area of T1 is 73,627 sq.m including the basement area, and is designed for IATA Level of Service C. The existing layout provides a more or less balanced capacity for the domestic and international processors of the different flows throughout the terminal building.*

*The design standards proposed would reflect the best industry practices and operating standards. The facilities provided would also meet all relevant IATA standards. The total floor area is planned to increase to approximately 150,556 sq.m. Additional 7 Code C / 3 Code E and 1 Code F contact positions will be added improving the efficiency and level of service by adding an East Pier to T1.*

*The Terminal 1 expansion Program includes minor improvements to the existing terminal building, utility buildings and other related improvements to add capacity to meet the forecasted demand. As there is a desire to expand the capacity of the overall operation including airside, landside and terminal facilities, the improvements are divided to provide further detail. The following are the proposed improvements:-*

- 1) Passenger Terminal Building Expansion and Modifications*
- 2) Airside Apron Expansion*
- 3) West New VVIP block*
- 4) New energy centre*
- 5) Expansion of chiller plant and utilities*
- 6) Kerbside improvements on airside and landside*
- 7) Terminal forecourt improvements*

*BIAL conducted consultation processes on the following with the stakeholders including airlines:*

*Master Plan aviation activity forecast for BIAL on 06<sup>th</sup> May 2010*

*T-1 expansion project on 06<sup>th</sup> August 2010*

*T-1 expansion airline sign-off on 15<sup>th</sup> July 2011 and*

*“Smile Bengaluru” – Consumer campaign from Sept 27<sup>th</sup> 2010*

*The project started on 01<sup>st</sup> August 2011 and is expected to be completed in phases by March/June 2013.*

*Runway 2 including Taxiway and Apron – Phase 1 and Phase 2*

*Bangalore has experienced rapid growth in passenger volumes, and will continue to realize significant growth over the 20-year planning period. In 2011/12, 12.7 million passengers (mppa) traveled through Bangalore, versus 1.8 million annual passengers in 1995/96. The year-on-year growth for 2010 to 2011 represents an annual growth rate of 9%, and CAGR of 14% per year for the past 15 years. International traffic has been the fastest growing segment, increasing from a reported 1.2 percent of total passengers in 1995/96 to nearly 20 percent currently.*

*The continued robust growth in the local Bangalore and broader Indian economy are expected to be the primary drivers of domestic air travel at Bangalore. Bangalore has a large population base, a diverse and a high value-added economy from which to stimulate air travel. It is assumed that the Bangalore economy will at a minimum mirror and potentially exceed the economic growth of India as a whole, over the forecast period.*

*In order to predict the impact these drivers will have on aviation activity and for the Master Plan update, a forecast update was developed by Landrum and Brown, Inc. for Bangalore in 2010. The Forecast provides the basis for establishing a long-term master plan and as such, supports decisions related to the planning and implementation of capital and operational improvements necessary to efficiently serve air transportation demand throughout the planning period. The Forecast was developed through an evaluation and analysis of several key areas such as:*

*Airline schedules*

*Indian aviation industry trends*

*GDP growth and econometric analysis*

*Comparable airport trends*

*Airport maturation considerations*

*Growth in low-fare market vs. network carriers*

### **Master Plan**

*In order to meet the projected demand, a master plan has been developed to accommodate 55 mppa over the planning horizon and has been phased accordingly in line with demand. A new runway, new terminal and associated airfield and apron works are proposed to cater to the passenger demand. The Land Use Plan was presented to the airlines on 28 March 2011 to keep them informed of the Plan which materialized following their input on the airport's forecast. The stakeholder briefing included discussion on the capacity challenges and development strategy, new runway and associated airfield*

development, passenger terminals, roadways and external connectivity and the airport's overall land use plan.

Existing Runway and Capacity Constraints

The existing airfield consists of Runway 9-27, which is 4,000 meters long and 45 meters wide, Taxiway A, which runs parallel to the full length of Runway 9-27, three rapid-exit taxiways (RETs), and one taxiway perpendicular to the runway. The existing airfield handles approximately 26-28 aircraft movements per hour on typical busy weekdays and approximately 32 movements per hour on special occasions. Taxiway A runs south of and parallel to the existing runway along its entire length and provides the only means of circulating between runway thresholds and the aircraft parking apron. An overview of the existing layout of the Airport is provided in Figure below.

**Existing Runway 09-27 Capacity**

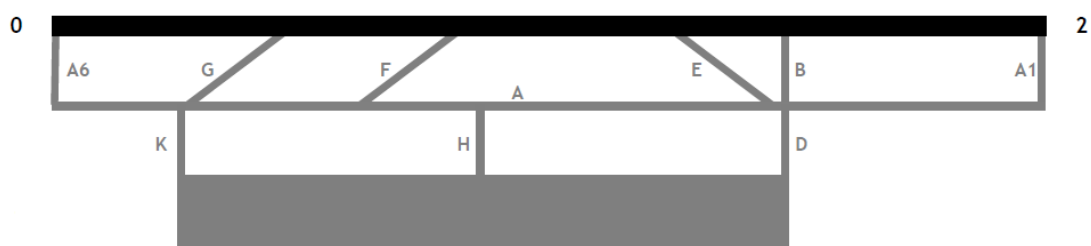
Physical and operational scenario	Hourly Capacity*	Annual capacity (ATMs)
Existing configuration under existing air traffic control procedures	36	136,000
Existing configuration with improved air traffic control procedures (reduced in-trail separations and reduced departure-departure separations)	45	170,000
Improved configuration with additional RETs and improved air traffic control procedures	46	172,000

**Source:** Jacobs Consultancy analysis, January 2011

\*Hourly Capacity assumes 50% Arrivals

**Need for Second Runway**

Aircraft operations were projected to grow from 119,033 in 2012 to approximately 550,000 operations at the 2029-30 demand level, the planning horizon considered in the Master Plan Update. Considering the current traffic trend, a second runway, **the New South Parallel Runway (NSPR)**, will be required by 2017/18. The need for the NSPR was



also established in prior planning studies and confirmed again in the Master Plan Update.

Second Terminal (T2) – Phase 1 and 2

Bangalore International Airport Limited (BIAL) became operational in 2008. The initial phase of development included a passenger terminal building (T1), a runway, entrance/exit taxiways, an isolation bay, airside road system, access roads, along with other ancillary developments. BIAL is moving into the next phase of development, under which T1 is already being expanded to cater to the growing demand, until the second Terminal (T2) is in operation.

As part of next phase, further development at airport is being planned, based on the updated forecast and Master Plan, which includes a new Terminal, second Runway and associated development. BIAL intends to develop new terminal facilities to meet the passenger demand and has initiated the process to appoint a lead consultant for the design of the Terminal 2 and related projects. It is anticipated that the first phase of the new Terminal 2 for 20 mppa and related facilities (with provisions for future expansion to 35 mppa in Phase 2), will be required to be operational by 2017-18.

BIAL had invited Expression of Interest from experienced, internationally reputable Architectural consultancy firms to provide Architectural and Engineering Design Consultancy Services for Terminal 2 (T2) and associated works at the Airport”

9.9 Financing of Capital Expenditure Projects - BIAL has submitted that financing of the Capital Expenditure proposed to be incurred will be largely through additional borrowings from banks, supported by the internal accruals as follows:

**Table 19: Source of Financing as proposed by BIAL under Single Till - Rs. Crore**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Capex cost including Interest During Construction	510.70	866.69	393.39	610.90	1674.08
Means of Financing					
Debt	0.00	862.38	83.39	398.43	1444.65
Internal Accruals	510.70	4.31	309.99	212.47	229.43

**Table 20: Source of Financing as proposed by BIAL under Dual Till - Rs. Crore**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Capex cost including Interest During Construction	510.70	866.69	391.81	583.71	1585.00
Means of Financing					
Debt	0.00	862.38	51.40	0.00	697.34
Internal Accruals	510.70	4.31	340.42	583.71	887.67

## **(b) Authority's examination of BIAL's submission on Future Capital Expenditure**

9.10 The Authority has carefully examined BIAL's submissions noting that they pertain to two categories namely, (a) Future/ Additional Capital Expenditure and (b) General Capital Expenditure. The Authority noted that the overall Capital expenditure proposed under Dual Till is less than Single Till due to reduced Interest Capitalisation, which is on account of reduction in financing through debt in Dual Till as compared to Single Till. Authority's observations on the above are given below in the following paragraphs.

### **Future / Additional Capital Expenditure**

9.11 The Authority notes BIAL is undertaking expansion of the existing Terminal (T1), along with expansion of Apron. It is noted that BIAL has submitted details on Stake holder consultation relating to Terminal 1 expansion and has submitted that the Apron Extension works have been planned as part of earlier Phase 1 itself (Before issue of Authority's guidelines, which inter alia provides requirements of Stakeholder consultation). No stakeholder consultation records have been submitted for any other Proposed Project (which are proposed to be carried out in First Control Period and costs are proposed to be spent but will nonetheless be in Work-In-Progress Stage at the end of First Control period). During discussions, BIAL informed the Authority that the preparatory works for the other Projects (Terminal 2, Runway 2 etc.) are underway and Stakeholder consultations are proposed to be conducted in due course.

9.12 The Authority also notes that BIAL has also not submitted any other detailed estimates/ cost break-down structure or certifications relating to the expenditures in respect of projects which are proposed to remain in Work in Progress during the current Control Period and will be capitalised during the next control period. However, the Authority assumes that the overall Business Plan of BIAL would have been approved by the Board of the company and assumes that expenditures proposed would be in line with the long term requirements of the Airport.

9.13 The Authority also notes that the value of fixed assets capitalised by BIAL in its books for the years 2011-12 and 2012-13 as can be seen from the audited financial statements vary from the projections submitted by the company. The Authority proposes to consider the values of assets based on actuals as available from the financial statements of BIAL for the period 2011-12 and 2012-13 and consider the projections submitted by BIAL for the remaining 3 years in the control period. However, it is also observed that the Capital Expenditure during the balance three years of the current control period may vary vis-a-vis the projected Capital Expenditure as per the Tariff proposal. Hence, the Authority proposes to true up the Regulatory Asset base for the current control period based on actual capital expenditure incurred during the current control period, while determining the Aeronautical tariffs for the next control period.

9.14 The Authority also notes that the costs proposed to be added as part of Regulatory Asset Base (RAB) and Financial books of the company would be different for reasons cited in Para 9.3 above. Further, it is observed that, in its submissions, BIAL has considered cost of debt for the year 2012-13 at 12.5% and an increase of 100 basis points for the year 2013-14 to 13.5%. Thereafter, i.e. for the years 2014-15 and 2015-16, BIAL has proposed to maintain the cost of debt at 13.5%. It is further observed that the actual cost of debt for the year 2012-13 was about 12%. Thus, as detailed in Para 12 below, the Authority proposes to consider the cost of debt at 12.5% for calculating Financing Allowance for the balance period of the current control period and calculate the consequent total additions to RAB accordingly.

#### **General Capital Expenditure / Maintenance Capital Expenditure**

9.15 BIAL submitted the detailed break-up of Capital expenditure proposed to be incurred relating to General Capital Expenditure / Maintenance Capital Expenditure to the tune of Rs. 420.3 Crores as given in Para 9.6 above. The Authority proposes to consider this expenditure as part of the additions to RAB. The Authority noted that one of the proposed General Capital Expenditure / Maintenance Capital Expenditure Project “Forecourts and Landscaping Requirements – Various line items consolidated” was more than Rs. 50 Crore. Upon enquiry, BIAL submitted on 3<sup>rd</sup> June 2013 as follows:

- i) *As the text reads ‘Forecourts and Landscaping Requirements – Various line items consolidated’, this capex line item is consolidated line item containing various maintenance capex requirements*
- ii) *This line item does not qualify for stake holder consultation*
- iii) *The major ‘Forecourts and Landscaping Requirements – Various line items consolidated’ break-up is mentioned below:*

<i>Code</i>	<i>Particulars (Budgetary Amt. in Rs.)</i>	<i>Total</i>
<i>1</i>	<i>Redesign of road network</i>	<i>458,204,484</i>
<i>2</i>	<i>Parking enhancement</i>	<i>1,533,681</i>
<i>3</i>	<i>Passenger convenience &amp; enhancing passenger experience</i>	<i>269,365,234</i>
<i>4</i>	<i>Miscellaneous including certain security related requirements</i>	<i>76,153,621</i>
	<i>Consolidated line items Total</i>	<i>805,257,020</i>

9.16 The Authority proposes to consider the projected General Capital Expenditure / Maintenance Capital Expenditure Projects for determination of Aeronautical tariffs for the current

control period. However, it is also observed that the actual Capital expenditure may vary from the projected values. Hence, the Authority proposes to true up the Maintenance Capital Expenditure/ General Capital Expenditure based on actual costs incurred, while determining the Aeronautical tariffs for the next control period.

9.17 The recomputed value of additions to RAB, based on change to Financing allowance due to the change in cost of debt, and considering actual capital expenditure for the year 2011-12 and 2012-13 is as given below:

**Table 21: Details of Capital Expenditure Projects proposed to be added to RAB during the current Control period – Rs. Crores**

Project	Date of Capitalisation	Basic Cost and charges	Financing allowance	Total cost
Other Projects	31-Mar-14	63.10	20.34	83.44
Apron Extension	31-Mar-14	118.38	24.46	142.84
T01 Expansion	30-Sep-13	1397.98	147.09	1545.07
Expansion Projects Capitalised				1771.35
Maintenance Capex Projects	31 <sup>st</sup> March 2012	15.43	0.00	15.43
	31 <sup>st</sup> March 2013	23.96	0.00	23.96
	31 <sup>st</sup> March 2014	235.80	0.00	235.80
	31 <sup>st</sup> March 2015	96.72	0.00	96.72
	31 <sup>st</sup> March 2016	61.68	0.00	61.68
Maintenance Capital Expenditure				433.59
Total Capitalisation		2013.05	191.89	2204.94

#### **Proposal No 4. Regarding Future Capital Expenditure**

##### **4.a. Based on the material before it and its analysis, the Authority proposes**

- i. To include the Capital Expenditure of Rs. 2204.94 Crores (Refer Table 21) as submitted by BIAL for the present, for the purpose of the determination of tariff for aeronautical services during the current control period**
- ii. To true-up the difference between the Capital Expenditure considered now and that actually incurred based on evidential submissions along with auditor certificates thereof at the time of determination of aeronautical tariff for the next control period, based on the approach adopted for inclusion or exclusion of assets in Regulatory Asset Base – under Single Till as well as Dual Till.**



## 10 Regulatory Asset Base (RAB) and Depreciation

### (a) BIAL's submission on Regulatory Asset Base and Depreciation

10.1 Airport Operations commenced in BIAL on 24<sup>th</sup> May 2008. The Initial Project cost capitalised in the financial books of the company during 2008-09 was Rs. 1978 Crores.

10.2 The Net block of Assets of Rs. 1595.69 Crores as of 31<sup>st</sup> March 2011, as per the audited Financials, has been considered as Opening RAB for the Control period, under Single Till. BIAL has submitted that there is no exclusion of assets from the Initial RAB. Under Dual Till Rs. 1300.74 crores has been considered as Opening Net block for computation of Average RAB.

10.3 Following is the table depicting the average RAB for the control period as submitted by BIAL.

**Table 22: Average RAB computation by BIAL under Single Till - Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1,595.69	1,543.96	1,615.11	3,175.32	3,121.22
Investment / Additions to RAB	69.96	198.87	1,725.30	142.97	78.38
Deletion/Disallowance	-	-	-	-	-
Depreciation & Amortization	(121.68)	(127.71)	(165.09)	(197.07)	(193.61)
Closing Regulatory Asset Base	1,543.96	1,615.11	3,175.32	3,121.22	3,005.99
Average RAB for Return	1,569.83	1,579.54	2,395.22	3,148.27	3,063.61

**Table 23: Average RAB computation by BIAL under Dual Till - Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1,300.74	1,257.28	1,336.07	2,611.97	2,569.91
Investment / Additions to RAB	57.31	184.78	1,412.79	120.73	65.64
Deletion/Disallowance	-	-	-	-	-
Depreciation & Amortization	(100.77)	(106.00)	(136.89)	(162.79)	(159.51)
Closing Regulatory Asset Base	1,257.28	1,336.07	2,611.97	2,569.91	2,476.04
Average RAB for Return	1,279.01	1,296.68	1,974.02	2,590.94	2,522.98

10.4 No reductions/ deletions to RAB have been proposed by BIAL during the first control period.

10.5 The Authority noted that a Hotel development project is underway in Bengaluru International Airport. On Hotel Project and Real Estate Development, BIAL has submitted that:

*a framework agreement for design, construction and operation of Business Hotel Facility at BIAL was entered into with EIH Limited and L&T Limited on 16<sup>th</sup> November 2006 and the consortium incorporated a company under the name "Bangalore Airport Hotels Limited"*

*Subsequently the AAI issued a no-objection certificate on 14<sup>th</sup> November 2008, with a height clearance of 30.36 meters only, as against the proposal of the consortium for a*

*45m. The consortium then expressed its inability to continue to develop and operate and sought certain additional concession from BIAL or for a settlement of cost incurred and this is currently under dispute and under arbitration proceedings”*

10.6 Also BIAL has stated that in view of the business plan for real estate activities not being firmed up, real estate business scenario has not been considered in their submissions.

### **Depreciation**

10.7 BIAL has submitted that the value of assets considered for Depreciation i.e. additions to RAB and the methodology of depreciation proposed are in line with the prescriptions of Direction 5 namely:

10.7.1 Depreciation allowed upto a maximum of 90% of the original cost of the asset on straight line basis

10.7.2 Depreciation on additions made at 50% of the applicable depreciation rate

10.8 Depreciation rates as have been adopted by BIAL seen from the Business Model is as given below:

**Table 24: Depreciation rates proposed by BIAL**

<b>Asset Type</b>	<b>Depn. Rate</b>
Buildings1-T,B,R – Buildings, Roads, Culverts, Apron	3.34%
Buildings2-RW/TW – Runway/ Taxiway	5.00%
Buildings3-WMS – Water Management System	3.34%
PM1 - Equip.-Airport/ Comm/ E&M/Office, Vehicles	10.34%
PM2-Lighting	10.34%
PM3-Safety – Safety and Security	16.21%
PM4 - IT Equipment	16.21%
Software	20.00%
ICT – Blended – ICT Refresh	16.21%
FF – Furniture and Fixtures	6.33%
Intangibles	3.33%

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Regulatory Asset Base and Authority’s response thereon:

10.9 Pursuant to AERAAT Order, BIAL has made submissions to the Authority on various aspects. Extracts of aspects relevant to RAB, submitted by BIAL are given below:

17. Land Value Adjustment:

Authority’s Approach: *The Authority has proposed to effect land value adjustments for those assets which are excluded from the scope of RAB. The Authority has proposed, in*

*Clauses 7.7 and 7.8 of Order No.13 and Clause 5.2.4 of Direction No.5 to make an adjustment in respect of any land associated with an asset excluded from the scope of RAB by reducing from the RAB the value of such land being the higher of (i) prevailing market value of such land, or (ii) book value of such land. The Authority has also proposed to commission experts to independently determine and review the market value in respect of such land.*

*Observations: BIAL was provided land under the Land Lease Deed by the State of Karnataka inter alia as a part of its policy to:*

*encourage private sector participation in the development of airports; and encourage and provide industrial development, tourism, cargo, movement and general economic and social development of the state of Karnataka.*

*The State of Karnataka has taken multiple steps for promotion of industries in the state of Karnataka. The Karnataka Industrial Areas Development Board was set up under the Karnataka Industrial Areas Board Development Act, 1966 in order to encourage and promote industrialization of the state. Similarly, the Karnataka State Industrial and Infrastructure Development Corporation (KSIIDC), earlier known as Karnataka State Industrial Investment and Development Corporation, was established in the year 1964, as a wholly owned undertaking of the State of Karnataka inter alia to encourage industrial growth in the state of Karnataka. The State of Karnataka, as a part of its overall objective of encouraging infrastructure and industrial development, also provided Rs.350 crore to BIAL to improve the viability of the Greenfield airport project and enhance the bankability of the initial phase, as detailed in the State Support Agreement. Thus, the State of Karnataka, as a matter of policy and in order to encourage development of airport infrastructure, provided viability gap funding as well as leased land to BIAL.*

*As per the Authority's proposals, land value adjustment is proposed in respect of those assets which are excluded from the scope of RAB. On first principles, even under a Single Till mechanism (which is not applicable in the case of BIAL), once assets are excluded from the scope of RAB, no regulation, in any form, is contemplated in respect of such assets. Therefore, the Authority's proposals are not in accordance with the "Single Till" principle itself.*

*Additionally, the proposal with respect to land value adjustment would completely set at naught the Land Lease Deed as well as the State Support Agreement. Clause 4.2 of the Land Lease Deed provides that BIAL may utilize the leased land inter alia for (i) improving the commercial viability of the project; and/or (ii) such that the utilization facilitates substantive further investment in or around the airport. Land value adjustment as*

*proposed by the Authority is the very antithesis of these objectives. If market value of the land is deducted, BIAL would get little or no benefit from the lease of the land and resultantly, will not be able to utilize any income from utilization of such land to make the airport project more viable. Further, ICAO doc 9562 recognizes the concept of an airport city', i.e. a city built around an airport, which is reminiscent of cities that were built around sea ports and river ports in the past centuries. This objective of development of areas surrounding the airport is sought to be achieved under clause 4.2(v) of the Land Lease Deed. Land value adjustment would be a full and complete disincentive for the airport operator to utilize the land for facilitating further investment around the airport as BIAL would be forced to buy land, which is already leased to it.*

*Without prejudice to the above, if market value of lands is reduced from the scope of RAB, effectively, the airport operator is forced to buy such land at prevailing market prices. This is an incongruous situation because such lands have been leased by the state of Karnataka to BIAL for a fixed term of 30 years. BIAL cannot be forced to pay market value of land, which it will never come to own and in respect of which; it will only have leasehold rights.*

*The proposed land value adjustments would also have the effect of negating the benefits provided to BIAL under the State Support Agreement and the Land Lease Deed. The effect of land value adjustment would be to recast the Land Lease Deed in its entirety. The proposed regulations are beyond the ambit and powers of the Authority.*

*The proposed regulations in respect of land value adjustments were neither discussed as a part of the White Paper nor as a part of the Consultation Paper. Therefore, neither BIAL nor any of the airport operators had any opportunity to submit their views regarding the proposed regulations in respect of land value adjustments. BIAL therefore requests that these objections be considered and the proposals in respect of land value adjustments dropped.*

*From a legal standpoint, the Authority simply has no power or jurisdiction to make land value adjustments or in any manner deal with assets that are beyond the scope of RAB. The proposed regulations are wholly beyond the jurisdiction of the Authority and are de hors the functions prescribed under the AERA Act.*

*Land value adjustment appears to be proposed on a presumption that considerable profits can be generated out of land usage for non-airport activities. Whereas in BIAL's case, scope for land usage for non-airport activities is quite different due to below features:*

*Airport is located far away from central business district.*

*No socio eco structure available around the airport*

*No significant industrial / commercial development in & around*

*No proper connectivity*

*Hence, considerable entrepreneurial ability and investment is required to realise any gains out of land usage for non-airport activity.*

*Realisation of value preceded by significant investment in terms of making the land as serviceable land. Who will fund the same?*

*The absurdity of the resultant situation is that firstly, BIAL or airport operators are being forced to procure such land effectively from airlines (since reduction in RAB will accrue to the benefit of airlines), who are not the owners of such land. Secondly, BIAL is being forced to buy land, which has been leased to it for a fixed period.*

*Submissions:*

*It is humbly submitted the Authority should revisit the manner in which Single Till mechanism is proposed to be implemented. The Authority need not make any land value adjustments or in any manner deal with assets that are beyond the scope of RAB. All proposals in this regard need to be cancelled.*

*25. Work in Progress Assets:*

*Authority's Approach:* *The Authority has proposed to deduct accumulated capital receipts of the nature of contributions from stakeholders including total contributions pertaining to work in progress assets including by way of development fees, capital grants and subsidies.*

*Observations:* *As stated in the context of concessional loans, the purpose of a subsidy or grant by a stakeholder such as the government is completely lost, if benefits there from do not accrue to the airport operator.*

*Submissions:* *The airport operator must be entitled to benefits and returns on all assets, irrespective of the nature of sources of capital for creation of such assets. The proposed regulations need not be applicable to services other than regulated services.*

*Scope of RAB or RAB Boundary*

*Authority's Approach:* *The Authority, in clauses 7.1 to 7.4 of Order No. 13 and clause 5.2 of Direction No. 5 has proposed principles with respect to exclusion and inclusion of assets in the RAB. The Authority has proposed that all fixed assets of the airport operator would constitute RAB assets subject to principles of inclusion and exclusion. The principles of inclusion and exclusion have been outlined in Order No. 13 and Direction No. 5.*

*Observations:* *In clause 7.2 of Order No. 13, the Authority has set out that all "airport assets" will come under the scope of Single Till. Surprisingly, in clause 7.3, the Authority*

*has extended the scope of assets to “all the fixed assets of the airport operator”. Consistent with what is stated above in this regard, the Authority ought not to include any assets or in any manner regulate assets pertaining to services other than regulated services. The AERA Act also does not permit regulation beyond the precincts of the airport. The proposed regulations with respect to principles of exclusion or inclusion depending on whether an asset derives material commercial advantage from the airport on account of its location etc. are inapposite. Under the AERA Act, it is the function of the Authority to determine tariffs for aeronautical services and for that purpose, consider the factors prescribed in Section 13(1)(a). In setting out principles of exclusion and inclusion and in defining the scope of RAB to include all non-aeronautical assets, the Authority has exceeded its mandate and jurisdiction.*

*Submissions: In BIAL’s humble view, consideration of all assets of the airport operator as the starting point needs to be revisited. The Authority can only consider those assets that are essential for providing the regulated services and should not consider any other assets that are required for providing services other than regulated services. BIAL reiterates that all assets with fixed locations inside terminal buildings should not be included in the scope of RAB and only those assets essential for performance of regulated services should be included. In this light, principles relating to exclusion and inclusion of assets needs to be relooked into.*

#### *29. Initial RAB*

*Authority’s Approach: The Authority proposes to not just consider the original cost of fixed assets as indicated in the last audited accounts, but further proposes to assess the cost by considering (i) evidence of competitive procurement for investments of more than 5% of the opening RAB of the first tariff year; (ii) evidence that investment was made in accordance with the approved plan; and (iii) evidence that investment, if any, over and above the approved investments, was necessary for providing better services or on account of requests from users or stakeholders.*

*The Authority has proposed to deduct accumulated capital receipts of the nature of contributions from stakeholders including total contributions pertaining to the fixed assets which are included in the scope of the RAB, including by way of development fees, capital grants and subsidies.*

*Observations: The airport operators, in exercise of their entrepreneurial freedom and enterprise, made multiple investments for development and/or modernization of major airports. In case of BIA, exercise of entrepreneurial skills was especially important and crucial because BIA was a Greenfield airport. Investments have been made by BIAL in line*

*with the master plan provided in the Concession Agreement. Investments were approved by the Airports Authority of India and the State Government as both the State parties are represented on the Board of BIAL. In this scenario, the Authority should not assess or evaluate the process or necessity of creation of assets. Once accounts have been audited, such audited accounts indicate the actual expenditure incurred for facilities that are available for all those who use airports and therefore, it is only fair that all such assets and the expenses incurred for their creation are included as a part of the RAB. There were no restrictions at the time of making of investments and such restrictions cannot be now imposed post facto.*

*As stated in the context of concessional loans, the purpose of a subsidy or grant by a stakeholder such as the government is completely lost, if benefits therefrom do not accrue to the airport operator.*

*Submissions: The proposal of the Authority for evaluating cost of fixed assets needs to be dropped. The costs indicated in the last audited accounts can be considered for the purpose of arriving at the initial cost of fixed assets and there need not be an enquiry conducted by the Authority in that regard. A subsidy or a contribution is provided as a sop and this should not be negated by not providing for returns on such contributions/grants/subsidies. The proposal for deducting subsidies/ contributions/ grants or any contributions from stakeholders for arriving at the original cost of fixed assets can be dropped. The airport operator must be entitled to benefits and returns on all assets, irrespective of the nature of sources of capital for creation of such assets. Without prejudice to the above, in the calculation of weighted average cost of capital, per clause 5.1.1 read with clause 5.1.5 of Direction No.5, interest free or concessional loan arrangements will be considered at the actual cost of such arrangements. However, even at the time of calculation of initial RAB, accumulated capital receipts of the nature of contributions from stakeholders are proposed to be reduced / subtracted from initial RAB. Thus, concessional loans or contributions from stakeholders are factored in twice, resulting in an unfair reduction of the returns to the airport operators. Additionally, without prejudice to the above, the proposed regulations in relation to arriving at original cost of fixed assets should not be applied in respect of services other than regulated services and book value of such assets should be considered.*

### 33. Passenger Service Fee

*Authority's Approach: In clause 16.2 of Order No.13 and clause 5.2 of Direction No.5, the Authority has proposed that the facilitation component in relation to security expenditure will be considered for remuneration through other tariff components as a part of the*

overall yield per passenger. The Authority has proposed that initial capital expenditure on security related assets shall be included as a part of the RAB. The Authority has further proposed that any incremental capital expenditure on security related assets shall be met out of the passenger service fee. The Authority has proposed to issue separate guidelines for determination of passenger service fee.

Observations: Costs and expenses in relation to security related expenditure is likely to be audited by the Comptroller and Auditor General.

Submissions: Expenses that may be disallowed by the CAG should be included either as a part of the RAB or as operations and maintenance expenditure. BIAL looks forward to the PSF guidelines containing necessary protections to safeguard the interests and investments of the airport operators.

### 35. Mandated Operating Cost Correction

Authority's Approach: In clause 6.16.1 of Direction No.5, while the Authority has proposed to allow error correction for mandated operating costs, the Authority has proposed that mandated capital expenditure incurred by the airport operator shall not be considered for correction within the control period.

Observations and Submissions: BIAL prefers that all mandated expenditure either capital or otherwise be considered by Authority in the calculation of RAB or reimbursed, as the case may be, within the control period.

### 30. Asset Value Adjustment

Authority's Approach: For assets to be excluded from the scope of RAB, the Authority, in clause 5.2.4 of Direction No.5, has proposed to consider the value of the asset as the higher of: (i) depreciated replacement cost value; (ii) book value; and (iii) transfer value of the asset.

Observations: Book value of assets represents a true and correct valuation inter alia because book value has been considered and approved by the auditors. Replacement cost value will not accurately represent the value of the asset since replacement value necessarily requires consideration of subsequent market phenomenon. For calculation of RAB, the Authority has proposed to consider book value of assets. It is only fair that book value of assets be considered for exclusion of assets from the scope of RAB.

The Authority has further proposed to consider the value at which an asset was excluded for the purposes of subsequent inclusion. This approach may not be appropriate since it may result in unfairness to either the airport operator or the users and also because, it may not reflect the true value of the asset at the time of inclusion.



*Also, at the time of calculating original cost of fixed assets, it is the book value which is considered and not the asset value. Rule of parity demands that inclusion and exclusion be treated similarly. BIAL therefore proposes that book value of assets be considered uniformly for the purposes of inclusion or exclusion. Likewise, even for subsequent inclusion, fair value rather than the value at which the asset was initially excluded, should be considered.*

*Submissions: The Authority should revisit its proposal and consider only the book value of assets proposed to be excluded from the scope of RAB. An asset which is excluded from the scope of RAB, at the time of its subsequent inclusion, should be assigned a true value / fair market value and the value assigned to it at the time of exclusion should not be considered.*

*37. Consultation Protocol:*

*Authority's Approach: Per clauses 8.1 to 8.22 of Order No.13 and Appendix 1 of Direction No.5, the Authority has proposed a detailed Consultation Protocol including by way of constituting an Airport Users Consultative Committee ("AUCC"). The Authority proposes to apply the Consultation Protocol as detailed in Appendix 1 of Direction No.5 in respect of aeronautical services as well as services other than aeronautical services.*

*Observations: Under the AERA Act Authority has to determine tariffs for aeronautical services. The Authority is also required to consider and give effect to the concessions granted by the state, which in the case of BIAL, is the Concession Agreement, State Support Agreement and the Land Lease Deed. As stated above, by effect of the Concession Agreement, the services of cargo, ground handling and supply of fuel are excluded from the ambit of regulation. In summation, under the AERA Act, the Authority can determine tariff only for aeronautical services, excluding cargo, ground handling and supply of fuel. The Authority may not consider determination of tariffs for any other services that may be provided by the airport operator. The function of regulating the consultation process appears to be concomitant to the power of determining tariffs and may not be an independent function. In the absence of jurisdiction to determine tariffs for services other than regulated services, it appears to be that the Authority has no power or jurisdiction to mandate consultation for such services.*

*Additionally, the constituents of AUCC include persons who do not fall within the definition of "stakeholder" under the Act.*

*Submissions: The consultation process/ Consultation Protocol with respect to services other than regulated services can be excluded. BIAL prefers that the constituents of AUCC be restricted to those who fall within the definition of "stakeholder". Specifically, the*

*Authority can exclude cargo, ground handling and fuel supply services from the Consultation Protocol.*

**(b) Authority's examination of BIAL's submission on Regulatory Asset Base and Depreciation**

10.10 The Authority has carefully considered the various comments made by BIAL on RAB and related aspects as part of the comments regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11 and the submissions made by BIAL.

**Land Value Adjustment**

10.11 The Authority has considered the submission of BIAL regarding its understanding of the Authority's approach with respect to Land Value Adjustment. While the Authority notes that the agreements referred to by BIAL have permitted the Operator to use the land for the stated purposes which may not be considered as "Airport Activities" it may not be correct for BIAL to benefit from the land being given mainly for the purpose of running an airport. It is not Authority's intention to state that BIAL will be forced to buy the land which has been given to it free of cost, but to pass on the benefit of exploitation of the land given, by reducing the Regulatory Asset Base. Authority has already detailed its deliberations on why an upfront deduction is being proposed for Land value adjustment from RAB.

10.12 Authority's review and discussions on this, including the deliberation on the decision to carry out an upfront adjustment has been elaborated in Airport Order and Airport Guidelines state that:

*"Land Value Adjustment: For assets excluded from the scope of RAB, an adjustment (Land Value Adjustment) in respect of any corresponding land associated with such asset transferred or leased to or acquired by the Airport Operator in the past would be considered at the higher of (a) the prevailing market value of such land, or (b) the book value of such land. For the purpose of effecting the above land value adjustment, the Authority will require the airport company to notify the location and book value of such land. The Authority may commission experts to independently determine and review the market value in respect of such land"*

10.13 By virtue of Para 7.3 of the Airport Order, the Authority has sought to exclude those assets which substantially provide amenities/facilities/services that are not related to or are not normally provided as airport services from the scope of RAB. In fact, therefore, the Authority has sought to separate the non-airport related activities of Airport Company from the airport activities and has, thus, confined its jurisdiction to the airport activities alone. In so far as exclusion of excess land, if any, is considered, the Authority has considered this issue by way of basic illustrative principles and treatment proposed in respect of few illustrated positions, in the Airport Order. The Authority did

not wish to go into the issue of when the Airport Operator should or should not use any piece of land for non-airport purposes, nor how much land should be so used because it did not want to put any fetters whatsoever on the operational freedom of the Airport Operator in this matter. Hence the timing and sequencing of using any piece of land for such non airport purposes would lie entirely in the hands of the Airport Operator. However, in order to remove the impact of the element of timing (or for that matter sequencing) of utilization of land for non-airport purposes from RAB calculations, as well as recognising that money is fungible, the basic principle adopted by the Authority is to look at the purpose of utilization of such land for non-airport purposes. The Authority has also stated that it would look at only the first such transaction and not any subsequent ones, distancing itself from the business and operational freedom of the Airport Operator to exploit future benefits. In fact, in sub Para 7.5.5. of the Order, it has been specifically stated that it would not be feasible for the Authority to prescribe treatment for all different forms of land transfers/alienations.

10.14 Therefore, if the operator undertakes any non-airport related activity on the land leased to it by KSIIDC, the Authority would consider each such case specifically on its own merits. Further, in terms of Land Lease Agreement dated 20<sup>th</sup> January 2005, BIAL does not have any unrestricted right to utilize the land leased to it by the KSIIDC for non-airport related purposes. As per Article 4.2 of the Land Lease Agreement dated 20<sup>th</sup> January 2005 between KSIIDC and BIAL, BIAL can utilize the site for any other purposes, which in its opinion is:

*Conducive or incidental to implementation of the Project; and/or*

*Conducive or incidental to operation and management of the airport; and/or*

*Enhances the passenger/cargo traffic at the airport; and/or*

*Improves the commercial viability of the Project; and/or*

*Facilitates substantive further investment in or around the Airport, only with the approval of the KSIIDC.*

10.15 The Authority submits that all these purposes have direct material linkage with the Project (viz. the Airport) with the only possible exception of “investment around the Airport”. While granting approval, KSIIDC may impose certain conditions and stipulation which would conceivably depend on the issue under its consideration.

10.16 However, the Authority notes that in case of BIAL, currently only a Hotel construction activity has been undertaken which is also under Arbitration. Hence, while the Authority stands by its view on the land value adjustment prescribed in the guidelines, no adjustment is proposed to be carried out for the purpose of this MYTP Determination. The Authority notes that BIAL has received Interest free Security Deposit of Rs. 76.50 Crores that it obtained in December 2006. This interest free security deposit is repayable from 2008-09 to 2014-15 as per the agreement between BIAL and EIH Limited and L&T. BIAL has received interest of Rs. 43 Crores on this deposit from December 2006

till March 2013, as per the certificate provided by a Chartered Accountant. The Authority does not propose to take both these amounts into reckoning for tariff determination for the present, pending final outcome of the arbitration proceedings.

#### **Work –In Progress Assets**

10.17 The Authority has considered the submissions of BIAL regarding its understanding of the Authority's approach with respect to work in progress assets. BIAL's understanding appears to be that the Authority has in its guidelines proposed to deduct accumulated capital receipts of the nature of contributions from stakeholders including total contributions pertaining to work in progress assets including by way of development fees, capital grants and subsidies.

10.18 The Authority's approach of treating capital work in progress is to give financing allowance at the cost of debt for the capital work in progress assets. The question of any deduction therefrom, therefore, does not arise. Secondly, in Authority's view, the nature of contributions from stakeholders is an important factor in determining whether they form part of the Regulatory Asset Base (RAB) or need to be deducted therefrom. For example, any subsidy received from the Government would need to be deducted from Regulatory Asset Base (RAB), which is also defined under the Accounting Standard AS-12.

10.19 Similarly, in Authority's view, the purpose of subsidy or grant by the stakeholder such as the Government is to reduce the overall cost of the airport services. If a regulatory regime does not take into account this purpose, then the intent of the Government in making available subsidy or grant or concessional loan is lost.

10.20 The SSA, in case of BIAL, clearly mentions that the State would extend assistance to the project in terms of leasing of land, interest free loan and subvention/subsidy. The Authority does not consider that it would be the Government's intention that it would give subsidy or concessional interest free loans for the project and yet BIAL should be entitled to return (and higher than reasonable return) on such means of finance. Moreover, the Authority calculates Weighted Average Cost of Capital (WACC) based on the costs associated with different means of finance on actual basis. Moreover, GoK has agreed to provide financial support to improve the viability of the project and enhance the bankability of the initial phase and has also agreed to have KSIIDC to provide the site on lease to BIAL. It is thus clear that low cost funds (subsidy or concessional loans) are meant to improve the project's bankability and not to allow the project or promoters to have higher returns.

#### **Scope of RAB or RAB Boundary**

10.21 Authority has carefully considered BIAL's submission regarding the Scope of RAB or the RAB Boundary. The Authority is however, not convinced of BIAL's submissions made and proposes to consider the prescription as laid down in the Airport Guidelines. Authority's intention is to consider

all assets that are used to provide Airport Services, under the purview of RAB. Matters on Till Mechanism have been deliberated in a separate section of this Consultation Paper under Para 26 below.

### **Initial RAB**

10.22 The Authority has carefully considered BIAL's submission regarding the Initial RAB. However, the Authority notes that the methodology prescribed in the Airport Guidelines for valuation of the Initial RAB have been devised in order to ensure that only appropriate and reasonable expenditure have been incurred in regard to the Initial RAB which is being considered for the purpose of providing the return.

10.23 The determination of initial RAB for the first control period is required to be made at the inception of the economic regulation. In case the historical cost of assets is not taken into consideration, the airport would end up not receiving any return in respect of such historical costs even though assets created therefrom shall be used for providing services at the airports. While ensuring that the historical costs are taken into consideration, the Authority has also indicated the safeguards to ensure that only the fair costs are taken into consideration and the users remunerate only such investments which have been undertaken in accordance with accepted business practices. Thus, the provision is included to ensure that the Airport Operator receives fair returns on the investments made and users do not pay for any 'gold plating' of such investments.

10.24 BIAL is a Board Management company and has the Chief Secretary of GoK as the Chairman of the Board. The Initial Project has also long since been commissioned in the year 2008. In view of the same, the Authority considers "Net Block" as per the audited financial statements of BIAL for the year ended 31<sup>st</sup> March 2011 as the Initial RAB.

### **Consideration of expenditure disallowed from PSF**

10.25 The Authority has reviewed BIAL's submission on consideration of capital expenditure that is disallowed from PSF. Detailed guidelines about PSF have already been issued by the Government and needs to be followed strictly.

### **Mandated Operating Cost Correction**

10.26 Authority has carefully reviewed BIAL's suggestion to consider the Mandated Operating Cost Correction within the Control period. However, the Authority is not persuaded to accept this recommendation. The prescribed Airport Guidelines shall apply. Changes to the Capital Expenditure are proposed to be trued up along with carrying cost, at the beginning of the next control period.

### **Asset Value adjustment**

10.27 Authority has carefully considered BIAL's submission regarding the Asset Value Adjustment. The position in respect of asset value adjustment for the assets excluded from the scope of RAB has

been evolved keeping in view the temptation or the possibility of gaming by an operator and to ensure that the users do not suffer due to such gaming.

### **Consultation Protocol**

10.28 The capital expenditure under consideration in clause 5.2.5 (b) of the Airport Guidelines is such expenditure in respect of which the operator seeks return through the tariffs to be determined by the Authority. The Authority has put in place a consultative mechanism by way of which the users would be in a position to be a part of decision making in respect of proposed capital expenditure. Wherever the capital expenditure is substantially committed, before the consultation process specified by the Authority by way of Airport Guidelines could be undertaken, the Authority has retained the discretion to review the same. This is only fair as in case of projects which are substantially committed a post facto user consultation would neither be desirable nor in the interest of implementation of the project.

10.29 At the same time, acceptance of the previously committed capital expenditure would amount to giving the airport operator a carte-blanche to make any investment and thereafter expect the users to pay for such investments without any review.

10.30 This is to safeguard against Airport Operator focussing more on Non-Aeronautical activities at the expense of the Aeronautical services. As Non-Aeronautical services is also utilised by Passengers and Cargo users – Authority feels that more broad based consultation in the areas of Non-Aeronautical Services would add robustness to the final decision. At any rate the Authority needs to take a final view based on the various views expressed during the consultation process.

### **Consideration of MYTP Submission made by BIAL**

10.31 BIAL has calculated the RAB for each year as the average of the opening and the closing RAB and the return is calculated on the average RAB. The Authority has decided, vide the Airport Order and Airport Guidelines, that RAB for the purpose of determination of tariffs shall be the average of the RAB value at the end of a tariff year and the RAB value at the end of the preceding tariff year, which is consistent with the approach adopted by BIAL in the tariff application.

10.32 BIAL has provided auditor's certificate on RAB and Work In Progress Assets. The Authority notes that an amount of Rs. 6.38 crores is to be reduced from RAB on account of disposal of assets, as per the Auditors' certificate. BIAL has informed that the loss on disposal has been included as part of "Operation and Maintenance" expenditure, but the Authority notes that a corresponding reduction has not been made to the RAB. The Authority proposes to adjust the same from the RAB as disposals, in line with the Airport Guidelines, from the RAB for the year 2011-12.

10.33 The Authority notes that depreciation claim for the purpose of RAB will be different from that on the asset values capitalised in books.

10.34 In view of changes to the asset capitalization values depreciation has to consequently change. Also, this has to be trued up based on the actual costs spent and capitalised in books.

10.35 The Authority also proposes to provide for 100% depreciation on additions without considering any salvage value.

10.36 Based on the changes proposed to the RAB, as detailed below, the revised Average RAB value for the purpose of return are presented in the ensuing tables:

- 10.36.1 Reduction of the net block of assets disposed-off to the tune of Rs. 6.38 Crores
- 10.36.2 Changing the rate of debt for the purpose of computation of Financing allowance
- 10.36.3 Considering asset capitalisation as proposed by Authority in Table 21
- 10.36.4 Consider depreciation on 100% of the asset values (without considering any salvage value)

**Table 25: Revised Average RAB computation under Single Till as made by the Authority - Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1,595.69	1,470.33	1,358.55	3,184.54	3,058.48
Investment / Additions to RAB	15.41	23.96	2,007.16	96.72	61.68
Deletion/Disallowance	(6.38)	-	-	-	-
Depreciation & Amortization	(134.39)	(135.73)	(181.18)	(222.78)	(215.68)
Closing Regulatory Asset Base	1,470.33	1,358.55	3,184.54	3,058.48	2,904.48
Average RAB for Return	1,533.01	1,414.44	2,271.55	3,121.51	2,981.48

**Table 26: Revised Average RAB computation under Dual Till as made by the Authority - Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1,300.74	1,197.75	1,104.43	2,621.29	2,521.56
Investment / Additions to RAB	14.74	19.17	1,666.82	84.39	52.42
Deletion/Disallowance	(6.38)	-	-	-	-
Depreciation & Amortization	(111.35)	(112.48)	(149.97)	(184.11)	(177.89)
Closing Regulatory Asset Base	1,197.75	1,104.43	2,621.29	2,521.56	2,396.09
Average RAB for Return	1,249.24	1,151.09	1,862.86	2,571.42	2,458.83

#### **Proposal No 5. Regarding Regulatory Asset block and Depreciation**

##### **5.a. Based on the material before it and its analysis, the Authority proposes**

- i. Not to carry out any adjustment to RAB on account of monetisation of land owing to the development of Hotel, while determining Aeronautical tariffs during the current control period.**

- ii. To consider Average Regulatory Asset Base as detailed in Table 25 and Table 26 under Single Till and Dual Till respectively, after making adjustments as detailed in Para 10.36 above**
- iii. To consider depreciation on 100% of the asset values (without considering any salvage value). To consider Depreciation as detailed in Table 25 and Table 26 under Single Till and Dual Till respectively**
- iv. Taking note that the Hotel project is under Arbitration, not to consider Rs. 76.50 Crores of Interest Free Security Deposit as well as Rs. 43 crores of interest earned on the deposits for the period from December 2006 till March 2013, for the purpose of tariff determination for the present, pending final outcome of the arbitration proceedings. (Refer Para 10.16 above)**
- v. To True up the Average RAB and the depreciation in the first year of the next control period based on the actual capital expenditure incurred in the current control period.**



## 11 Traffic Forecast

### (a) BIAL's submission on Traffic Forecast

11.1 The Airport Guidelines specify that, the airport operator is required to submit traffic forecasts as part of the MYTP submissions. The Airport Guidelines further provide that the Authority would reserve the right to review such forecast assumptions, methodologies and processes and to determine the final forecast to be used for the determination of tariffs. The Airport Guidelines further provide that the Authority will also use forecast correction mechanism if the actual traffic turns out to fall outside the prescribed bands with the upper and lower band percentages being equal. As part of the tariff determination process, the Authority would require Airport Operators to provide proposals for the values of the upper and lower bands, supported by evidence for the rationale of such bands and will review the operation of the bands and determine the final bands for tariff determination. As per the Airport Guidelines, any variation outside of the bands will be shared equally between the Airport Operator and users.

11.2 BIAL has, in their revised MYTP submission stated that the traffic numbers estimated are based on the:

11.2.1 Actual traffic for 2011-12

11.2.2 Management Estimate of the traffic numbers for the period 2012-13 and 2013-14

11.2.3 Estimated Growth in traffic considering the growth rates defined by L&B in their Aviation Activity Forecast study report dated August 2010, for the years 2014-15 and 2015-16.

11.3 BIAL has submitted that the actual traffic scenario for 2011-12 and the projected traffic scenario for 2012-13, considering the actual traffic has indicated a de-growth in traffic.

11.4 BIAL has proposed a traffic band (both upper and lower) of 5% as part of its MYTP submission.

11.5 The actual traffic and Growth in traffic numbers for BIAL for the period 2008-09 to 2011-12 as submitted by BIAL along with the data for the period 2012-13 submitted by BIAL on 13<sup>th</sup> May 2013 based on a further query from the Authority, together with the Compounded Annual Growth Rate for the past 5 years and 10 years till 2012-13, are as follows:

**Table 27: Actual Traffic Data of Bangalore for the period 2008-09 to 2012-13**

Category	Dom / Intl	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	CAGR 5Y	CAGR 10Y
PAX (Mn)	Domestic	8.59	7.12	7.99	9.36	10.33	9.49	2.01%	14.75%
	International	1.55	1.64	1.94	2.27	2.38	2.5	10.10%	21.17%
ATM #s	Domestic	101898	91057	90578	94969	100973	86848	-3.15%	9.15%
	International	11700	13920	14075	16818	18222	18340	9.41%	16.76%

Category	Dom / Intl	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	CAGR 5Y	CAGR 10Y
Cargo (tons)	Domestic	69987	58310	90493	101700	103803	82756	3.41%	7.15%
	International	108160	99690	172677	188693	196186	143911	5.88%	16.76%

11.6 BIAL has proposed the following growth rates for the remaining 3 years in the control period:

**Table 28: Traffic Growth rates proposed by BIAL for the period 2013-14 to 2015-16**

Category	Dom / Intl	2013-14	2014-15	2015-16
PAX (Millions)	Domestic	8.50%	11.42%	11.11%
	International	11.30%	12.88%	12.36%
ATM #s	Domestic	8.95%	11.76%	11.00%
	International	9.25%	11.77%	11.00%
Cargo (tons)	Domestic	12.38%	2.07%	-6.51%
	International	9.27%	3.97%	-0.97%

11.7 Also, further to a subsequent query, BIAL has, on 15<sup>th</sup> May 2013 submitted the revised traffic study by Landrum & Brown dated February 2013. Summary of traffic numbers proposed by BIAL for the period 2013-14 to 2015-16 are as given below:

**Table 29: Traffic forecast for the period 2013-14 to 2015-16 as projected by L&B in their February 2013 report**

Category	Dom / Intl	2013-14	2014-15	2015-16
PAX (Millions)	Domestic	10.24	11.49	12.77
	International	2.69	3.00	3.31
ATM #s	Domestic	96980	108440	118480
	International	19400	21290	23190
Cargo (tons)	Domestic	240300	260000	282000

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Traffic Forecasting:

11.8 Pursuant to AERAAT Order, BIAL has made submissions to the Authority on various aspects. Extracts of aspects relevant to Traffic Forecasting, submitted by BIAL are given below:

*26. Traffic Forecasting:*

*Authority's Approach: Per clause 10.3 of Order No.13 and clause 6.15.2 of Direction No.5, any variation of traffic forecast, outside of the bands, will be shared equally between airport operators and users.*

*Observations: Airport operators have little or no control over the volume of traffic. As it can be understood by examining historical traffic behaviour, traffic normally/ functionally behaves in correlation to general economic scenario in the country and abroad and the*

*general economic situation in the country in a subsequent year is almost impossible to predict. The September 2008 collapse of Lehmann Brothers and the consequent economic downturn was not predicted by leading economists / financial institutions or even governments world over. Further, there are a large number of uncertainties which are simply beyond prediction, such as, failure of a particular carrier resulting into zero ATMs from that carrier. In this context, it may be relevant for us to consider studies of a world renowned economist / thinker Mr. Nassim Nicholas Taleb and his works on insufficiency of knowledge and consequent inability to predict. In the absence of effective tools for prediction being available with the airport operator, it would be a herculean task and a near impossibility for the airport operator to accurately forecast the traffic volumes. More often than not, unprecedented situations could have the effect of pushing the traffic volumes beyond prescribed bands. In such circumstances, all that the airport operator can do is to provide its services efficiently and the AERA Act prescribes a mechanism for implementation of set service quality parameters. Besides, the proposed regulations will force the airport operator to focus on issues like forecasting, which ought not to be the primary concern of the airport operator. As a result, the airport operator's focus on providing good quality airport services may be diverted. The costs of regulatory compliance will also sky rocket since prediction would require the airport operator to engage with specialized professionals in that field. It is our humble opinion that, a regulation requiring myriad compliances will increase the cost of regulation and will also restrict entrepreneurial freedom.*

*Submissions: The Authority is submitted to reconsider its proposals not to provide error correction for forecasting errors beyond the bands that may be prescribed by the Authority and should provide for complete error correction. For services other than regulated services, there should be no regulation whatsoever including with respect to forecasting error correction.*

#### **(b) Authority's examination on BIAL's submission on Traffic Forecast**

**11.9** The Authority has carefully considered the various comments made by BIAL on Traffic Forecasting as part of the comments regarding Airport Order and Airport Guidelines. The Authority has noted the submission of the airport operator that the traffic forecast is after all a forecast and the airport operator does not have much control over the volume of traffic. In some other regulatory regimes, the regulator projects an appropriate and reasonable traffic forecasts and determines the aeronautical charges thereof. Any benefit or loss owing to the actual traffic being higher or lower than the forecast is, therefore on the airport operator's account. Under the Indian context, however, the Authority feels that it would be reasonable if the traffic projections are trued

up with regard to actual volume of traffic. The Authority emphasises, however, that by so doing it has, to a large extent, mitigated the risk associated with airport operations and therefore, should, accordingly, be reflected in the fair rate of return on equity.

#### **Consideration of MYTP Submission made by BIAL**

11.10 The Authority notes that there are sharp increases/ decreases in the actual traffic at Bangalore over the past 10 years, with traffic in 2012-13 indicating de-growth in traffic as compared to the previous year.

11.11 The Authority notes that the actual traffic for 2012-13 as submitted by BIAL is different than the traffic forecast provided by BIAL for the year. Difference in traffic for 2012-13 is tabulated below:

**Table 30: Difference in Traffic for 2012-13 between the MYTP submission and actual traffic**

Category	Dom / Intl	Actuals	As per BIAL
PAX (Millions)	Domestic	9.49	9.11
	International	2.50	2.47
ATM #s	Domestic	86,848	85,903
	International	18,340	18,743
Cargo (tons)	Domestic	82,756	90,493
	International	1,43,911	1,72,678

11.12 The Authority proposes to correct the traffic in the MYTP submission for 2012-13 based on the actual traffic numbers.

11.13 Revised traffic numbers the period 2013-14 to 2015-16, by applying the growth rates proposed by BIAL on the actual traffic for 2012-13 is as given below.

**Table 31: Revised Projected traffic for the period 2013-14 to 2015-16**

Category	Dom / Intl	2013-14	2014-15	2015-16
PAX (Millions)	Domestic	10.30	11.47	12.75
	International	2.79	3.15	3.54
ATM #s	Domestic	94,797	1,05,948	1,17,601
	International	20,372	22,769	25,273
Cargo (tons)	Domestic	93,005	94,929	88,749
	International	1,57,258	1,63,503	1,61,916

11.14 On comparison of the L&B projections received now (Table 29) vis-a-vis revised projections for future period computed (Table 31), the Authority notes that the revised projections computed are more or less in line with the L&B Projections. Also the growth rates assumed for the 3 years by BIAL, is higher than the CAGR for the past 5 year period. In view of the above, the Authority proposes to consider the Growth rates for 2013-14 to 2015-16 as proposed by BIAL.

11.15 In view of the unstable growth with sharp increases and decreases, the Authority proposes to true up the actual traffic, without any band adjustment for the first control period, in the first year of the next control period.

**Proposal No 6. Regarding Traffic Projections**

**6.a. Based on the material before it and its analysis, the Authority proposes**

- i. To consider the actual traffic for the periods 2011-12 and 2012-13**
- ii. To consider the growth rates proposed by BIAL for the balance period of 2013-14 to 2015-16 in the current control period.**
- iii. To true up the traffic volume based on actual growth during the current control period while determining aeronautical tariffs for the next control period commencing w.e.f 01.04.2016.**

## 12 Debt and Cost of Debt

### (a) BIAL's submission on Debt and Cost of Debt

12.1 BIAL has taken loans to finance the Initial Airport construction and the term loan balances in books as of 31<sup>st</sup> March 2012 and 31<sup>st</sup> March 2013 are as given below:

**Table 32: Details of Loan balances in the books of BIAL as of Mar 2012 and Mar 2013 - Rs. Crore**

Particulars	31 <sup>st</sup> March 2013	31 <sup>st</sup> March 2012
Rupee Term Loan (incl. addl. Loans)	1,634.90	923.37
Foreign Currency Loan	181.39	204.68
TOTAL	1,816.29	1,128.05

12.2 Also, in addition an amount of Rs. 335.50 Crores has been received as Interest free State Support Loan from the GoK which is due to be repaid from 2018-19 onwards. This has been considered as part of Debt in BIAL's submission.

12.3 BIAL has submitted that, during the First Control period, the Capital Expenditure Projects are proposed to be funded based on Rupee Term Loan facilities to be availed as below:

**Table 33: Details of capital expenditure proposed to be funded by Debt under Single and Dual Till - Rs. Crores**

Particulars	Amount
Amount proposed to be funded by debt under Single Till	2,788.86
Amount proposed to be funded by debt under Dual Till	1,611.11

12.4 BIAL has submitted that the existing Rupee loans have an interest rate which has been recently set upwards to 11.5% and in view of the change in SBI PLR rates, an increase of 1% for 2012-13 and 2% for 2013-14 to 2015-16 have been proposed in the submission. Foreign currency loans' interest on the ECB facility taken for the 1<sup>st</sup> Phase of the Project has been considered at 10.15% on a fully hedged basis from the year 2012-13 by BIAL.

12.5 Based on the above parameters and the estimated Debt balance for each year in the Control period, BIAL has computed and submitted the Weighted Average Cost of Debt for the control period as follows:

**Table 34: Weighted average cost of debt proposed by BIAL under Single Till – Amounts in Rs. Crore**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	133.98	183.55	234.18	235.10	323.13
Opening Debt balance	1,619.16	1,435.50	2,109.88	1,983.78	2,113.07
Closing Debt balance	1,435.50	2,109.88	1,983.78	2,113.07	3,275.75
Average Debt Balance	1,527.33	1,772.69	2,046.83	2,048.43	2,694.41
Weighted Average Interest rate computed	8.77%	10.35%	11.44%	11.48%	11.99%
Weighted Average Interest rate for	11.00%				

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
the period					

**Table 35: Weighted average cost of debt proposed by BIAL under Dual Till – Amounts in Rs. Crore**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	133.98	183.55	232.02	204.07	215.78
Opening Debt balance	1,619.16	1,435.50	2,109.88	1,951.79	1,685.38
Closing Debt balance	1,435.50	2,109.88	1,951.79	1,685.38	2,113.20
Average Debt Balance	1,527.33	1,772.69	2,030.83	1,818.58	1,899.29
Weighted Average Interest rate computed	8.77%	10.35%	11.42%	11.22%	11.36%
Weighted Average Interest rate for the period	10.71%				

12.6 BIAL has, in its submission considered the State Support Loan as part of Debt with a 0% cost, which is in line with the regulatory guidelines which state that

*“The Authority shall consider, for determination of Fair Rate of Return, interest free or concessional loan arrangements, deposits if any, at the actual costs of such arrangements”*

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Debt, Cost of Debt and Interest free or concessional arrangements:

12.7 Pursuant to AERAAT Order dated 15<sup>th</sup> February 2013, BIAL has made submissions to the Authority on various aspects. Extracts of aspects relevant to Cost of Debt, submitted by BIAL are given below:

21. Cost of Debt:

Authority’s approach: *The Authority has proposed an intensive scrutiny approach in clause 6.4 of Order No.13 read with clause 5.14 of Direction No.5 with respect to variation in the cost of debt over a control period. The Authority proposes to consider the forecast cost of existing and future debt within a control period, subject to the Authority being assured of reasonableness of such cost based on review, including of its sources, procedures and methods used for raising such debts. Per clause 5.1.6 of Direction No.5, the Authority would also consider the nature of financial instruments being used or proposed to be used to mobilize debt for determining a cost of debt.*

Observations: *As per extant international practices and standards with respect to utility regulators, intrusive regulation is employed, only when it is absolutely essential and unavoidable. BIAL understands that the Authority also proposes to determine tariffs with least amount of regulatory intervention in the day-to-day business of, and management*

*of the airport by, the airport operator. The approach adopted with respect to variation and forecast in the cost of debt is intrusive and requires to be revisited. A review of the sources, procedures and methods used for raising debt by the Authority is excessively intrusive and vastly restricts entrepreneurial freedom. If a transparent process is adopted by the airport operator in line with prevalent market practices, there can be no requirement for further regulatory oversight. Any further regulatory oversight will constrain entrepreneurial ability and leveraging of market situation by the airport operator.*

*Submissions: In determining cost of debt, the Authority need not further require the airport operator to provide justifications if such loans are obtained in a transparent manner. To illustrate, if quotes for loans are called for from more than one bank and thereafter, a competitive quote is considered, BIAL prefers that such loans be accepted as such and without enquiry. Since there is scope for error correction or truing up of accounts, a less intrusive approach would be in consonance with the overall regulatory objective of achieving efficiency without needlessly exposing airport users to risk. For services other than regulated services, there should be no regulation whatsoever including with respect to cost of debt. Further, in determining cost of debt, any fixing of ceilings on cost of debt need to be avoided.*

#### *22. Refinancing of debt:*

*Authority's Approach: The Authority expects airport operators to make every effort to refinance / restructure debt in clause 6.5 of Order No.13. The costs and benefits associated with refinancing would be passed on to the users.*

*Observations: The business reality is that refinancing / restructuring of debts is not taken recourse to frequently. Refinancing/ restructuring of debt is also many a times linked with obtaining further debt. To illustrate, certain existing debts may have to be moved to a new lender who is willing to offer further debt on competitive terms. These are decisions that are taken by the airport operator keeping in mind the airport business as a whole and impositions of restrictions in that regard will impede on the operational freedom of the airport operator.*

*Submissions: These are purely commercial decisions and BIAL prefers that these decisions be left to the wisdom of the airport operator. Since restructuring of debt is linked to myriad other factors, there cannot be no expectations in this regard. For services other than regulated services, there should be no regulation whatsoever including with respect to refinancing of loans.*

#### *24. Interest Free or Concessional Loan Agreements:*



*Authority's Approach:* Per clause 6.7 of Order No.13 and clause 5.1.5 of Direction No.5, the Authority has proposed to consider interest free or concessional loan arrangements at the actual cost of debt.

*Observations:* Interest free or concessional loans are provided to the airport operator as a fillip to its business operations and to enhance viability and profitability of the airport operator. By considering interest free or concessional loans at actual cost, such benefit is completely negated. To illustrate, if the airport operator obtains loans at market rates, the market rates would get reflected in the cost of debt and consequently, in the fair rate of return. Likewise, if interest free or concessional loans are obtained, since they will be considered at actual, no benefit will accrue to the airport operator at the time of calculation of fair rate of return. The proposed arrangements will provide no incentive whatsoever for obtaining interest free or concessional loans and in the scheme of things proposed, interest free or concessional loans will become a misnomer. The proposed regulations are unfair to the airport operator because they deprive the airport operator of a benefit which was specifically conferred on it. For instance, if in a particular control period, the entire financing requirements of the airport operator are met with by interest free loans, the cost of debt will be zero, which in turn, will make the FRoR zero / nil leaving the airport operator with no returns. This is certainly not contemplated under the AERA Act.

*Submissions:* The Authority should consider and provide returns at market rates for interest free or concessional loans. For services other than regulated services, there should be no regulation whatsoever including with respect to interest free or concessional loans.

#### **(b) Authority's examination of BIAL's submission on Debt and Cost of Debt**

**12.8** The Authority has carefully considered the various comments made by BIAL on Cost of Debt and related aspects as part of the comments regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11.

#### **Cost of Debt and Refinancing of Debt**

**12.9** The Authority has carefully considered the submissions made by BIAL with regard to Cost of Debt and Refinancing of Debt. The Airport Guidelines specify that:

**12.9.1** Consider the forecast cost of existing debt, subject to the Authority being assured of the reasonableness of such costs based on a review including of its sources, procedures and methods used for raising such debt(s).

12.9.2 Consider the forecast of future cost of debt proposed to be raised during the Control Period or such debt which may be subject to a floating rate of interest subject to the Authority being assured of the reasonableness of such costs based on a review of including of its sources, procedures and methods used for raising such debt(s).

12.9.3 Determine a weighted average cost of debt in a control period for the purpose of determination of FRoR and shall be based on the forecast quantum of debt for each Tariff year in a Control Period.

12.9.4 Consider for determination of Fair Rate of Return, interest free or concessional loan arrangements, deposits if any at the cost of such arrangements.

12.10 While reasonableness is an important factor, in other regimes, Cost of Debt is assessed ex-ante and is not trued up based on actuals, where the expectation is to manage based on the Cost of Debt allowed. As of now, the debt contracted by BIAL is in the range of Rs 1816.29 crores, as per the Financial Statements submitted for the year ended 31<sup>st</sup> March 2013. The airport operator is expected to make reasonable efforts to contain the cost of debt if it is to be a cost pass-through as the Authority is proposing to do. Hence the Authority would need to be assured that such efforts are indeed made.

12.11 However, the Authority notes that BIAL is a Board Managed company with 4 nominees of the State Promoters. It has representation from Senior level officials from GOI, AAI and GOK and is chaired by the Chief Secretary to the GOK. The Authority therefore presumes that while contracting debt, the Board will supervise the Management to make all reasonable efforts to contain the cost of debt.

12.12 Having regard to the fact that this is the first Control Period the Authority proposes to true up the Cost of Debt based on the actual cost incurred during the Control period (Except for providing for Foreign Exchange gains / losses – for which the Authority's views have been clearly explained earlier in Airport Order)

12.13 In this context, the request of BIAL to give it return even on subsidy/ interest-free loan (that BIAL chooses to refer to as "Concessional loan") appears rather unusual and for reasons mentioned in Para 12.14 below Authority is unable to accede to the same.

#### **Interest Free or concessional agreements**

12.14 The Authority has carefully considered the example given by BIAL in respect of interest free or concessional loan agreement. BIAL has stated that if the interest free or concessional loans are given interest cost at actual, this *"arrangement will provide no incentive whatsoever for obtaining interest free or concessional loans and in the scheme of things proposed interest free or concessional loans will become a misnomer."* It is further stated by way of an example that in the event the entire

financing requirements of the project operator are met with by interest free loans, the cost of debt will be zero which, in turn, will make the Fair Rate of Return zero leaving the airport operator with no returns.

12.15 Fair Rate of Return implies certain reimbursements to the airport operator on the investments made by it, and therefore, necessarily takes into account the costs of the airport operator in obtaining such finances. In the event that the entire capital cost is funded by interest free loan, the airport operator has no cost of obtaining finances. It is also assumed in the example that he has not brought in any equity. Hence neither the question of taking any return on equity nor taking into account any cost of debt arises. However, the guidelines on tariff determination would include other elements of costs like depreciation, operating and maintenance cost, etc. It is not clear to the Authority if the airport operator is not incurring any cost in obtaining finance then, what is the logic of still making some return available to him on such financing. The Authority also notes that this appear to be a hypothetical example and generally interest free or concessional loans are made available to lower the costs associated with that particular project. Similar arrangement applies to Subsidy which is generally granted by Government to lower the cost associated with a project in question. In case of subsidy, there is a clear accounting standard as to how such subsidy is to be treated with reference to project cost. The Authority is thus unable to accept the argument advanced by BIAL in this respect. The Authority also notes that the term 'interest free or concessional loans' applies to such loans which bear interest either at zero rate or at rates lower than what are available in the market. Hence the issue put forth by the Operator of such loans becoming a misnomer only on account of not granting equivalent cost of debt to such loan is not tenable.

12.16 On review of submission made by BIAL on the Cost of Debt, the Authority notes that the Interest cost on loans and the Debt balances considered in the Business plan for 2011-12 and 2012-13 vary from the actuals as available from the audited Financial Statements. The Authority proposes to correct the Interest cost and rate of interest based on the actual numbers available, for the period 2011-12 and 2012-13.

12.17 The Authority has carefully examined BIAL's submission on the need for increase in Cost of Debt in future. The Authority notes that the arrangements with Banks are at Floating rates which could increase/ decrease considering various factors, not limited to, the monetary policy of Reserve Bank of India, changes in individual banks' interest rate policies etc. However, there are no evidences / details provided by the company, for the increase in interest rates proposed by it.

12.18 Based on further information called for by the Authority, BIAL submitted the necessary information with respect to the existing loans taken, as of 31<sup>st</sup> December 2012. BIAL has also submitted auditor's certificate in support of the Interest rates submitted. The Authority has

accordingly taken into account the interest costs as per actuals. The Authority finds that based on the different interest rates of different banks and financial institution, ceiling of 12.5% on the interest cost of Rupee debt appeared to be reasonable for the remaining part of the control period. BIAL had however submitted that it expects the interest rates to harden and may go up to 13.5%. The Authority has analysed this concern separately in Para 12.19 below.

12.19 The Authority has noted that the highest rate of interest applicable for BIAL currently stands at 11.75% for the Rupee Term Loan facility and 12% for the Bridge Loan, as can be seen from the submission and Auditor's certificate. The Authority has had reference to the latest Mid-Quarter Monetary Policy of Reserve Bank of India (RBI). In its Mid Quarter Monetary Policy Review: March, 2013, RBI has reduced the repo rate by 25 basis points to 7.50%. As reported, this reduction in repo rate was passed on by most of the banks to its customers and experts from various banks expected further easing in this year. Further, RBI stated in its review that,

*"...The foremost challenge for returning the economy to a high growth trajectory is to revive investment. A competitive interest rate is necessary for this, but not sufficient....."*

12.20 In view of the above, the Authority felt that it is not possible to take a definitive view in this matter. However, considering the RBI review and the current rate of interest applicable for BIAL, the Authority felt that the debt contracted by BIAL appears to be at an interest level, above which presently there appears to be little possibility of the cost of debt moving further up. The Authority is cognizant of the fact that while the current highest rate of interest for BIAL is at 12.00%, the loans from other banks are at current rates of interest of around 11.5%. Considering allowing for some head room, the Authority proposes to put a ceiling to the cost of debt for BIAL at 12.50%. In view of the above and for the purpose of determination of aeronautical tariffs, the Authority proposes not to accept an increase of 1% in the rate of interest of rupee term loan (from 12.5%) for the period 2013-14 to 2015-16 as proposed by BIAL as its future cost of debt.

12.21 Also, pursuant to a query by the Authority, to support the Interest cost on Foreign Currency loan including the proposed cost of hedge, BIAL submitted relevant letter from the concerned bank, indicating the complete cost of ECB loan including hedging cost for the period 2013 till 2018. The Authority has accordingly taken this in its calculations for the weighted average cost of debt during the current control period.

12.22 The Authority further proposes to true-up the cost of debt for the current control period with actual values (determined as weighted average rate of interest for the individual tranches of loan) subject to the proposed ceiling of 12.50% for the Rupee term Loan of BIAL and 10.15% for the ECB loan of BIAL. The Authority may review this ceiling upon reasonable evidence that BIAL may present to the Authority in this behalf.

12.23 The Authority has noted from the tariff model, submitted by BIAL, that the weighted average cost of debt differs between the Single Till Tariff model and the Dual Till tariff model. This is on account of difference in quantum of debt proposed under the different tills, which affects the computation of interest rate for the year.

12.24 Revised cost of debt after considering the above changes and based on the re-estimated quantum of debt as is computed in the Business Model, based on all other changes carried out by the Authority is given as below.

**Table 36: Revised weighted average cost of debt under Single Till – Amounts in Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	129.72	145.43	242.41	249.22	298.97
Opening Debt balance	1,619.16	1,461.55	2,149.79	2,433.30	2,149.69
Closing Debt balance	1,461.55	2,149.79	2,433.30	2,149.69	3,221.89
Average Debt Balance	1,540.36	1,805.67	2,291.54	2,291.49	2,685.79
Weighted average Interest rate computed	8.42%	8.05%	10.58%	10.88%	11.13%
Weighted Average Interest rate for the period	10.04%				

**Table 37: Revised Weighted average cost of Debt under Dual Till – Amounts in Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	129.72	145.43	230.98	248.67	312.36
Opening Debt balance	1,619.16	1,461.55	2,149.79	2,250.38	2,323.71
Closing Debt balance	1,461.55	2,149.79	2,250.38	2,323.71	3,262.14
Average Debt Balance	1,540.36	1,805.67	2,200.08	2,287.04	2,792.93
Weighted average Interest rate computed	8.42%	8.05%	10.50%	10.87%	11.18%
Weighted Average Interest rate for the period	10.04%				

#### **Proposal No 7. Regarding Cost of Debt**

##### **7.a. Based on the material before it and its analysis, the Authority proposes**

- i. To consider the actual cost of Rupee Term Loan and ECB Loan, paid by BIAL, for FY 2011-12 and FY 2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13.**
- ii. To consider a ceiling in respect of the cost of debt for rupee term loan availed by BIAL at 12.50%.**

- iii. Not to accept the proposed increase of 1% in the rate of interest of rupee term loan for calculation of future cost of debt for the FY 2014-15 and FY 2015-16.**
- iv. To true-up the cost of debt for the current control period with actual values (determined as weighted average rate of interest for the individual tranches of loan drawn within the control period) subject to the ceiling of 12.50% for the Rupee Term Loan and 10.15% for the ECB Loan.**
- v. To review this ceiling upon reasonable evidence that BIAL may present to the Authority in this behalf.**
- vi. To consider the Weighted average Cost of debt at 10.04% both under Single and Dual Till as detailed in Table 36 and Table 37 respectively**

## 13 Cost of Equity

### (a) BIAL's submission on Cost of Equity

13.1 BIAL has submitted that it has engaged KPMG to carry out the study on Cost of Equity for the Airport, wherein which, KPMG has estimated a cost of equity at 27.9% under Single Till and at 28.3% under Dual Till for the First Control period and at 23.5% as per the Optimal Gearing Levels (60% gearing). In the revised Multi Year Tariff Proposal submitted by BIAL in November 2012, BIAL has computed the Fair Rate of Return (FRoR) considering cost of equity at 24.4% for the first control period, similar to their initial submission made in September 2011.

13.2 **Risk Free Rate** – KPMG has submitted that they have considered 10 year bond yield at the valuation date for the purpose of calculation of Rf (due to high trade volumes and a strong resilience to inflation than a 30 year bond). Based on such yield rate, 8.6% risk free rate as on 31<sup>st</sup> March 2012 has been considered.

13.3 **Market Risk Premium** – KPMG has stated that they have considered equity risk premium at 8.73%. This has been computed considering the market return computed based on 10 year annualized return on 90 days moving average of market return. Rm has accordingly been considered at 17.33% using BSE Sensex, this historical return being considered as expected average return of market. Hence Risk Premium (Rm – Rf) has been considered at 8.73% (17.33% minus 8.6%)

13.4 **Beta** – KPMG has considered Betas of listed international operators in the emerging markets as a reference point for considering Beta of BIAL, as BIAL is not a listed entity. Following are the airports and the relevant Asset Betas considered by KPMG:

**Table 38: Details of comparable airports considered by KPMG for identification of Asset Beta**

Sr. No.	Comparables	Equity Beta	Effective Tax Rate	Debt Equity Ratio	Asset Betas
1	Airports of Thailand Public Company Limited	1.1	23.00%	93.20%	0.64
2	Beijing Capital International Airport Company Limited	1	25.00%	125.30%	0.53
3	Grupo Aeroportuario del Centro Norte SAB de CV	0.8	30.00%	16.90%	0.73
4	Grupo Aeroportuario del Pacifico S.A.B. de CV	0.8	30.00%	8.00%	0.74
5	Grupo Aeroportuario del Sureste, SAB de CV	1.1	30.00%	2.90%	1.04
6	Shanghai International Airport Co., Ltd.	1	25.00%	10.00%	0.91
7	Xiamen International Airport Co. Ltd.	0.9	25.00%	0.00%	0.94
8	Guaogzhou Balyun International Airport Co. Ltd.	0.9	25.00%	20.30%	0.82
	Median	0.95			0.78

13.5 KPMG has stated that they have taken “a filtered approach while identifying comparable airports, like – country of operations – Emerging markets, Business model, Regulatory environment and liquidity of stock. The equity betas for these shortlisted companies were found and subsequently the asset betas for each of them were calculated by adjusting their respective financial leverage. Based on the analysis of listed airports in the emerging markets, the 3 year median asset beta is about 0.78”

13.6 The Median value arrived above has been considered as the reference Asset Beta for BIAL, from which the Equity Beta has been computed as follows:

$$\text{Equity Beta} = \text{Asset Beta} * (1 + (1 - \text{tax rate}) * D/E)$$

13.7 For the purpose of computation of Equity Beta, KPMG has considered Minimum alternate tax rate of 20.01% (Consistent with BIAL’s submission of the tax rate based on which Income tax reimbursement has been projected) and a Gearing ratio of 70%

$$\text{Accordingly Equity Beta has been computed as: } 0.78 * (1 + \{(1 - 0.2001) * 2.3\}) = 2.21$$

13.8 Hence, the Cost of Equity has been computed by KPMG as 27.9% as follows:

$$8.6\% + 2.21 * 8.73\% = 27.9\%$$

13.9 Extract of KPMG’s report detailing the above is given below:

**Table 39: Cost of Equity computed by KPMG for BIAL for the first control period under Single Till**

Risk free rate	8.60%
Beta	2.21
Equity risk premium (Rm-Rf)	8.70%
Cost of Equity (Re)	27.90%

13.10 Similarly the cost of equity under Dual Till has been proposed by KPMG as follows:

**Table 40: Cost of Equity computed by KPMG for BIAL for the first control period under Dual Till**

Risk free rate	8.60%
Beta	2.25
Equity risk premium (Rm-Rf)	8.70%
Cost of Equity (Re)	28.30%

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Cost of Equity:

13.11 Pursuant to AERAAT Order, BIAL has made submissions to the Authority on various aspects. Extracts of aspects relevant to Cost of Equity, submitted by BIAL are given below:



16. Although Indian airports operate under regulatory conditions similar to the other capital intensive and long gestation infrastructure assets such as power generation, power distribution, roads and ports, the risk profile of airports is not comparable with the other infrastructure assets due to the following:-

a. Airports have a fair mix of aeronautical, non-aeronautical and real estate related revenues.

b. Cyclical in nature – the degree of severity or volatility in cash flows is higher in the case of airports and hence the risk and return profiles are not comparable.

c. The Indian airport operators are exposed to certain additional unique risks on account of nascent stage of the regulatory framework, capital constraints, financial risks, traffic risk, operators are relatively new, political uncertainties etc.

Considering the unique risks in the airport sector compared to other sectors, we would request the Authority to consider the following factors, otherwise, the airport sector will be perceived as less attractive for investment, which will not be in the long term interest of the sector.

Market risk premium: Equity Risk Premium ( $R_m - R_f$ ) which is the difference between the expected rate of return on the market portfolio and the risk-free rate, the market rate of return or  $R_m$  may be calculated based on 10 year annualized return on 90 days moving average of market return using BSE Sensex as the market return indicator.

While computing the asset beta, consideration of betas of all listed airports in developing and emerging country markets.

While selecting listed international airports from countries within developing and emerging markets, their semblance to Indian airports on the following factors may be considered:-

Economic profile

Operating environment

Opportunities and constraints

Regulatory environment and

Financial position

iv. The base rate RoE recommended by Regulators/Committees of other sectors like Central Electricity Regulatory Commission, State Electricity Regulatory commission, Tariff Authority of Major Ports (TAMP) and NHAI are in the range of 15.5% to 18% depending upon different parameters including the risks associated. Hence, airport sector which is prone to higher risks than all these sectors shall have a much higher RoE compared to these sectors.

## **(b) Authority's examination of BIAL's submission on Cost of Equity**

13.12 The Authority had, in its Consultation Paper No. 03/2009-10 dated 26<sup>th</sup> February 2010 (on the Regulatory Philosophy and Approach in Economic Regulation of Airports and Air Navigation Services), stated that it recognizes that the assessment of the cost of equity will be highly material to the Authority's reviews of airport charges. In addition, as stated in the Order No. 06/2010-11 as on 26<sup>th</sup> October 2010, the Authority has in the past noted that none of the private airports are listed companies and therefore the equity betas for these companies are not available and would have to be assessed through comparison with a comparator set that is listed. The Authority observed that the estimation of cost of equity (RoE) is a technical matter and requires expert assessment and computation.

13.13 In this background, the Authority had requested the National Institute of Public Finance and Policy (NIPFP), New Delhi to estimate the expected cost of equity for the private airports, including Bengaluru International Airport. NIPFP is a centre for advanced applied research in public finance and public policy. NIPFP had given its analysis of the Cost of Equity of BIAL. Its report is appended herewith.

13.14 Director, NIPFP has, vide DO letter dated 13<sup>th</sup> December 2011, forwarded the Report to the Authority for its review.

13.15 The salient features of the Report submitted by NIPFP in respect of cost of equity are as under:

13.15.1 Keeping in view the Authority's decision, the CAPM has been used for estimating the cost of equity.

13.15.2 The Risk free rate (Rf) has been assessed as percentage (%) on the basis of arithmetic average of daily yields on 10-year GOI bonds over the period from January 01, 2001 to December 31, 2010. The average yield of 10 year GoI bonds during this time period was 7.35% and NIPFP has recommended considering this as the risk free rate. NIPFP stated that it has considered 10-years GoI bonds as they are the appropriate benchmarks for longer term horizon of investments as expected for airports.

13.15.3 The Equity risk premium (Rm – Rf) has been assessed as percentage (%) taking into account the historical risk premium of 4.31% for the US markets (geometric average of premium for stocks over treasury bonds over the period of 1928-2010) and a default risk spread of 2.4% for India (given the local currency sovereign rating of Ba1). Thus the equity risk premium estimated by NIPFP is 6.71%.

13.15.4 NIPFP considered a comparator set consisting of 27 listed airports, both from developed and developing regions. It then proceeded to calculate the equity beta for each of the

airports. It also estimated the market capitalization as well as the book values of debt and equity. Its table indicates the results of these calculations. Finally it suggested as asset beta of 0.51 as the median value for the airports contained in the comparator set. Thereafter it considered the various risk mitigating measures especial to BIAL and suggested an asset beta of 0.4 as appropriate having regard to the totality of the circumstances and the risk profile of BIAL, considering that the risk factors effecting beta are proposed to be taken care of by truing up the traffic and using the user development fee as a revenue enhancing measure to give to the airport operator the required return on his equity.

13.15.5 NIPFP took reference to a GVK Group acquiring 14% equity stake in BIAL from Siemens Project Ventures for Rs. 620 crores which valued the market value of equity for the Bengaluru International Airport at Rs. 4429 Cr and the debt levels were Rs. 1619 Cr. Thus the leverage comes out to be 0.27  $((1619/1619+4429))$

13.15.6 Considering the above stated asset beta of 0.4 and re-levering it, the equity beta comes out to be 0.55  $(=0.4/(1-0.27))$

Considering all the above factors, the cost of equity for BIAL comes out to be 11.04%  $(7.35(R_f) + 6.71(R_m - R_f) * 0.55(\text{equity beta}) = 11.04\%)$

13.16 Finally, NIPFP has given a range of Cost of Equity as 11.04% to 11.91% depending on the value of asset beta considered by it. In view of its significance, the Authority has given a detailed consideration to the issue of cost of equity at hand. It has also noted the range of estimates of RoE as calculated by NIPFP in accordance with the CAPM framework adopted by the Authority.

13.17 The Airports as an Infrastructure Asset class has certain special characteristics. Airports have characteristics of Monopoly, it is a Public Utility handed over from Public Sector to Private Sector and it is also a Regulated entity. The Planning commission in its report "Private Participation in Infrastructure" dated January 2010 has also specifically brought these aspects into focus stating that *".....Since PPP projects typically involve transfer or lease of public assets, delegation of governmental Authority for recovery of user charges, operation and/or control of public utilities/ services in a monopolistic environment and sharing of risk and contingent liabilities by the Government, they should be regarded as public projects where accountability would continue to rest with Government. The PPP modality is only a device for getting private investment into public projects with the objective of enhancing public welfare. ...."*. Hence, while the Private Airport Operator would need to be fairly rewarded for his investments (for continued interest of Private Sector in Airports), its expectations of return would need to take into account the characteristics of the Airports. Accordingly, the Authority has considered the points made by Bangalore International Airport Ltd.(BIAL) in respect of cost of equity (CoE) including the report of KPMG in support of the cost of equity. These are analysed as under:

13.18 **Risk Free Rate:** KPMG had indicated the risk free rate at 8.6% as on 31<sup>st</sup> March, 2012. The Authority notes that the 10 year bond yield as of 23<sup>rd</sup> May, 2013 (as per Bloomberg) is 7.17%. NIPFP has taken the risk free rate at 7.35%. The Authority does not find any reason to change the rate of 7.35% assumed by NIPFP for the purposes of calculated of beta as per CAPM model.

13.19 **Market Risk Premium:** KPMG has calculated market risk premium at 8.73, based on market return of 10 year annualized return on 90 days moving average of market return. NIPFP, however, had adopted a different methodology based on the MRP of USA and adding a certain risk premium for India. NIPFP has computed MRP at 6.71%. Calculation of MRP is an important element because it gets amplified by beta (should the beta have a value more than 1). The Authority, thus, does not find any reason to change the methodology adopted by NIPFP.

13.20 **Beta:** The KPMG has considered a comparator set of listed international operators in the emerging markets as a reference point for consideration of beta of BIAL, as BIAL is not a listed entity. In its comments on the comparator set in airports like Mumbai, Delhi as well as Consultation Paper of Hyderabad, the Authority has stated that taking only the developing or emerging markets as reference points, unnecessarily, restricts the comparator set and there is no *a priori* reason to do so. KPMG has taken a comparator set consisting of 8 airports of only 3 countries of Thailand, China and Mexico. The Authority does not consider this to be representative set for BIAL.

13.21 That apart, cost of equity calculations made by M/s Jacob in connection with RGI Airport, Hyderabad, the comparator set chosen by M/s Jacob consisted of 11 airports of which 9 were from developed economies and 2 from developing economies (Mexico). It would, thus, be seen that Hyderabad airport was thought to be comparative to other airports from developed economies.

13.22 Furthermore, The Commerce Commission New Zealand in its Input Methodologies (Airport Services) Reasons paper December 2010, has, inter alia, calculated the leverage as well as asset beta of airports comparable to New Zealand airports. It has taken a sample of 25 overseas airports that comprise both developed and developing countries. The Authority, therefore, does not find any reason to compare Bengaluru International Airport only from the developing economies and not also from the developed ones and the Authority has given the details in Consultation Paper No 9/2013-14 dated 21<sup>st</sup> May 2013 in respect of tariff determination of RGI Airport, Hyderabad.

13.23 ACI had given its comments on the Consultation Paper No 22/ 2012-13 in respect of Mumbai airport giving example of Greece that, according to ACI, had promised 15% return on equity. The Authority had pointed out that ACI considers Greece to be comparable to Mumbai airport in so far as the return on equity issue is concerned, and that Greece falls into the category of “advanced economy” as per IMF classification (October 2012). It had further pointed out the IMF classification also includes, as advanced economies, countries in Europe, USA, New Zealand, etc. and that the return on equity in some of these countries has been estimated at 6.5% to 7.5% by the regulatory or

competition authorities.

13.24 The Authority is cognizant of the fact that cost of equity calculation in different countries need to take into account the characteristics of those countries, airports situated in those countries and other attendant circumstances. Merely taking only a restrictive category of developing or developed economies may not only be misleading but also inappropriate. The Authority also notes that in a separate assessment made by CRISIL for MIAL, the 5 year beta of Mexico airport is lower than some of the developed countries' airports. Taking all the factors into consideration, the Authority feels that a comparator set consisting of both developed and developing economies is more likely to yield a robust estimation of beta than taking only 3 countries from the emerging markets/economies. The Authority, therefore, considers the methodology and the comparator set adopted by NIPFP as more robust for calculation of beta for Bengaluru International Airport.

13.25 The Authority had already indicated its approach towards re-levering of asset beta into equity beta in accordance with notional gearing of 60% or debt equity ratio of 1.5:1. It has also explained its reasoning in its orders of Delhi as well as Mumbai. It has pointed out that capital structure is the decision of the company. If the company feel that its operations are much riskier than the market, it should choose its capital structure accordingly and with lower gearing. The Authority has taken gearing at 60% (Debt : Equity ratio at 1.5:1) for the purposes of calculating Equity Beta. Hence, the Authority does not feel that a particular financial structure (with higher gearing) which is within the discretion of the Shareholders should impact adversely on the tariffs in regulatory determination through calculation of Equity Beta. The Authority, is therefore, not in agreement with KPMG's assessed equity beta of 2.21. The equity beta of 2.21 would imply that were BIAL be a listed company, its share price would go up by 121% if the market goes up by 10%.

#### Additional Submission by BIAL

13.26 Additionally, BIAL has made certain additional submissions stating inter alia that the risk profile of airports is not comparable with the other infrastructure assets and has given the following reasoning:

13.26.1 **Mix of aeronautical, non-aeronautical and real estate related revenues:** The Authority's treatment for real estate is not so much based on the yearly revenues from the real estate as it is in terms of the market valuation, the operation of real estate that BIAL plans to develop. The timing of such development is also to be determined by BIAL. The Authority also notes that market valuation would normally include the possible cash flows from the assets and can be said to be a reasonably accurate proxy for future revenues. As far as the aeronautical and non-aeronautical revenues are concerned, the Authority has separately proposed to true up the same and, therefore, on this count, the riskiness of Bengaluru International Airport can be said to

be much lower than what operates in “*other capital intensive and long gestation infrastructural assets such as Power Generation, Power Distribution, Roads and Ports*”, as indicated by BIAL.

13.26.2 **Cyclicality:** According to BIAL, “*degree of severity and volatility in connection with flows is higher in the case of airports than other infrastructural assets*” Here again, the Authority had deliberated on this aspect which is why it is separately proposing to true up the passenger volumes as well as non-aeronautical income. The reason of cyclicality engendering enhancement of risk in the case of airport is, therefore, eliminated. Hence with the proposal of truing up the risk and return profile of Bengaluru International Airport, is expected to become far more favourable than other infrastructural asset class.

13.27 **Unique risks according to BIAL:** BIAL has given what according to it are additional unique risks that the Indian Airport Operators are exposed to. BIAL states that:

*“The Indian airport operators are exposed to certain additional unique risks on account of nascent stage of the regulatory framework, capital constraints, financial risks, traffic risk, operators are relatively new, political uncertainties etc.*

*Considering the unique risks in the airport sector compared to other sectors, we would request the Authority to consider the following factors, otherwise, the airport sector will be perceived as less attractive for investment, which will not be in the long term interest of the sector”*

13.28 The Authority has given its careful consideration to these unique risk factors (reproduced in Para 13.27 above) and is addressing them in seriatim in paragraph below. The Authority infers that when BIAL is referring to the risk factor that “operators are relatively new” it is perhaps referring to the Private Airport Operators and not to Indian Airport Operators in general. For example, AAI cannot be termed as a “relatively new operator”. Secondly, the other Private shareholders like Unique Zurich, a Shareholder in BIAL or Fraport, a Shareholder in DIAL or Airport Company of South Africa Global Limited (ACSA), a shareholder in MIAL or for that matter Malaysian Airport Bhd. a Shareholder in HIAL may not share this perception of “unique risk factor” of “relatively new operators”. Thirdly, according to the Planning Commission<sup>2</sup>, one of the justifications of the PPP modality is the expectation that the private promoter partner will bring in superior managerial expertise resulting in lowering of costs and improving efficiencies in a competitive environment. If the relative newness of the private airport operator is contributing to risk, this expectation of the Planning Commission would appear to have been belied. The Authority notes that many of the risk factors cannot be called systematic risks that alone are factored in the calculation of Beta. Any risk factor that is specific to an Airport is thus diversifiable (for the Shareholders) and hence does not

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<sup>2</sup> “Private Participation in Infrastructure”, Planning Commission, 15<sup>th</sup> January 2010, Foreword by the Deputy Chairman.

enter into the calculation of Beta. Since the risk assessment needs to be made with reference to a specific airport and BIAL has given the above unique risk factors, the Authority is analysing the same specifically with respect to BIAL.

13.28.1 **Nascent stage of the regulatory framework:** As far as the regulatory framework is concerned, the Authority believes that its Airport Order as well as Airport Guidelines gives a transparent and coherent framework for economic regulation of airports. It also notes, however, that BIAL, along with other Private Airport Operators do not appear to have found this framework agreeable and hence had gone in appeal against this framework. The Authority is giving hereunder the latest position with respect to the appeals filed by Private Airport Operators against the Airport Order and Airport Guidelines.

13.28.2 AERAAT had disposed-off the appeals of BIAL. In its Order dated 15<sup>th</sup> February 2013 the Tribunal has stated that:

*“5. .... when the matters came for disposal on merits it was found that in spite of the guidelines the directions issued pursuance thereto yet there would be no impediment for the AERA to consider all the relevant issues and then to finalise the order regarding the determination of tariff of airports.”.....*

*“6. If this is so, there would not be any question of proceeding with the hearing of these appeals at this stage since in spite of the impugned orders it will be open for the appellants to canvass all the contentions which they want to raise in these appeals and convince AERA about their merits.*

*7. It has so happened that in spite of elapse of substantial time period the tariff has still not been determined which causes prejudice to both the concerned parties as well as the stakeholders.*

*8. In that view, we would dispose-off these appeals with the direction to the AERA to complete this exercise of determination of tariff and while doing so, the AERA would give opportunities to all the stakeholders to raise all the plea and contentions and consider the same. The impugned orders herein would not come in the way of that exercise. We would, however, request AERA to complete the determination exercise as expeditiously as possible. We have taken this view as we are of the firm opinion that it would not be proper to entertain the appeals on different stages of determination of tariff and to give the finality to the questions of final determination of tariff.....”*

13.28.3 The Authority in compliance with the Order of AERAAT is proceeding, in this Consultation Paper, to analyse the submissions made by BIAL. The Authority therefore is unable

to appreciate the argument that its Orders mentioned above constitute any risk on account of nascent stage of regulatory framework.

13.28.4 **Capital Constraints:** As regards the capital constraints the Authority notes that the Govt. of Karnataka had advanced an interest free loan of Rs. 335.5 crores of which repayment commences after 10<sup>th</sup> year of airport operation. Contribution of GoI and AAI in Equity is 13% each, namely Rs. 50 crores each. Hence, the Equity brought in by the initial Private Promoters at Rs. 284.6 Crores is considerably less than both (a) the loan by GoK and (b) much lesser than the Public funds constituting the loan by GoK and Equity by GoK and AAI (Refer Para 26.89 below for further discussion on this point). The Authority infers that the capital constraint indicated by BIAL is probably on account of the shareholders Agreement which inter alia prescribes a cap of Rs. 50 crore that can be brought in by AAI and other covenants in the SHA. This is an issue purely pertaining to the SHA and therefore, an arrangement between different shareholders. The Authority notes that the GoK has leased 4008 acres of land to BIAL at what appears to the Authority at attractive and lower lease rentals. BIAL, under Clause 4.2 of the Land Lease Agreement can commercially exploit the land in excess of airport requirements. This in view of the Authority is an important Capital Risk mitigating factor. However, BIAL has not taken recourse to this source of Capital funding and has not submitted any concrete proposal for the same, even during the currently on-going expansion phase.

13.28.5 The Authority also notes, however, that if the company and therefore, its shareholders do come to the conclusion that the covenants of the Shareholders' Agreement do constitute a "unique risk", the remedy should not be to expose the passengers to such a risk. The Authority would expect BIAL and its Shareholders to address this issue within the framework of various agreements and accordingly develop financing plan. (Refer Para 28 below as well as Para 4.21 above). At any rate a particular financing arrangement or limitation thereof is specific to the company and cannot be considered as unique risk for the purposes of calculation of Beta in that the investors can diversify such a risk.

13.28.6 **Financing Risk:** As regards financing risk, if the Airport Operator is attributing larger financing risk to higher Debt Equity Ratio, this is really a matter for the Shareholders and the Company to consider because Capital Structure is a business decision of the company. Generally, higher Debt Equity Ratio is associated with lower risk (relatively stable cash flows). If as indicated by BIAL and supported by KPMG, BIAL considers itself exposed to much higher business risk, its Capital Structure should reflect this concern appropriately and should have had a capital structure with lower gearing or higher equity. The Authority has come across an article "Regulatory Risk, Cost of Capital and Investment Decisions in the Telecommunications Industry: International Comparisons" by Anastassios Gentzoglanis of University of Sherbrooke (Canada)



according to which “UK regulators have expressed their opinion on what constitutes an optimal capital structure for regulated firms. The following table indicates the UK regulators' judgment on optimal capital structure for various regulated industries”.

**Table 41: Optimal debt Ratios in Various Regulatory Settings**

Regulatory agency	Optimal debt ratio
Water companies (Ofwat, 1999)	45%-55%
Rail track (ORR, 1999)	50%
Public electricity suppliers (Ofgem, 1999)	50%
National Grid Company (Ofgem, 2000)	60%-70%
Transco (Ofgem, 2001)	62.50%
Mobile phone operators (Ofcom, 2001)	10%-30%
Source: De Fraja, G., and C. Stones, (2003), "Risk and Capital Structure in the Regulated Firm" WP, University of York. Fraja et al calls the optimal debt ratio as “leverage assumptions”.	

13.28.7 If BIAL regards Bengaluru International Airport as risky as it has submitted to be, then its capital structure should appropriately reflect this risk assessment and therefore have a **much lower debt ratio**. The Authority observes that this is not so. The Concession agreement provides that the UDF can be levied (apart from Capital Expansion) also towards *"the provision of passenger amenities, services and facilities and the UDF will be used for development, management, maintenance and operation"*. Hence, UDF is also a revenue enhancing measure to ensure that the Airport Operator receives fair rate of return (including Equity) that may be determined by the Authority. Secondly, the Authority has proposed truing up mechanism with respect to the passenger traffic, non-aeronautical revenue and Operating and Maintenance Expenditure. In view of the Authority, such truing up is in fact a “unique” element much less constituting a risk and is in fact, elimination of risk.

13.28.8 **Traffic Risk:** In normal course, in regulatory regimes the traffic risk is borne by the operator. The passengers are, therefore insulated from this risk. With the Authority’s proposal of truing up, passenger traffic as well as non-aero revenue, the traffic risk is effectively transferred from the airport operator (entrepreneur) to the passengers. Implicitly, what this means is that the regulatory approach has insulated the Airport Operator (and not the passengers) from the traffic risk. The Authority therefore does not feel that there is any traffic risk faced by BIAL.

13.28.9 **Operators are relatively new:** BIAL has also indicated a risk factor, viz. operators are relatively new. The Authority presumes that BIAL’s reference to “Operators” is to the Operator of Bengaluru International Airport and not to Operators in plurality. The Authority notes that while selecting the initial promoters of BIAL, appropriate due diligence was carried out by the GoK (vide Para 1 above) and only thereafter the consortium led by M/s Siemens GmbH and consisting of Unique Zurich and L&T were awarded the concession. The initial promoters commenced the

Operations on 24<sup>th</sup> May 2008. These initial promoters would thus have been regarded as experienced in development and management of Airports. Thereafter, in the second half of 2009 the GVK Group acquired 12% stake in BIAL from Unique and 17% from L&T. Later, it acquired 14% stake in BIAL from Siemens GmbH in August 2011 and thus took Management Control of the Company. The Authority notes that the submission containing these risk factors are made on behalf of the company. It would appear therefore that the management of the company passed from the hands of experienced operators to relatively new Operator and thus allegedly adding (according to BIAL) a “unique” risk factor.

13.28.10 Despite the likely internal assessment of BIAL, the Authority is not persuaded to agree with the same. It notes that BIAL’s Board has one senior representative from AAI, one senior representative from the MoCA, representatives from GoK including the Chief Secretary of Karnataka as its Chairman. Apart from GVK, AAI which has vast experience of managing all the airports in the country before the privatization through PPP mode of the four metro airports, has a shareholding in BIAL. The Authority is aware that GVK has separate business verticals in infrastructural areas of Power Generation, Highways as well as Airports. It has also noted that according to GVK’s website it is *“One of India’s largest private sector airport operators managing 2 of the 3 busiest airports and handling 44 mppa through India’s first brownfield and greenfield airports under PPP model- CSIA, Mumbai and Bengaluru International Airport, Bangalore respectively and 2 more in Indonesia”*. The Authority, therefore, infers that M/s GVK Group as the largest shareholder in BIAL, has full confidence in its expertise in running and expanding, if necessary, the Bengaluru International airport. The Authority also notes the airport is undergoing substantial expansion to meet the future needs under GVK leadership. Further, the Authority notes that BIAL has an agreement with Unique Zurich, for Operation, Maintenance and Support of the Airport with a performance fee which is based on the profits of the Airport Operations. The Authority is, therefore, unable to accept BIAL’s unusual argument that the operators are relatively new and that this constitutes a “unique” risk.

13.28.11 **Political Uncertainty:** BIAL has also referred to the issue of political uncertainty as a risk factor. The Authority is unable to appreciate that there would be political uncertainty of the type that may contribute to enhancing the risk profile of Bengaluru International Airport. Apart from that, the Authority also notes that, BIAL has on its Board, senior representatives from the Gol, AAI and GoK and the Chief Secretary, Karnataka is the Chairman of the Board. With this constitution of the Board, the Authority does not feel that BIAL is exposed to any political uncertainty that may constitute a “unique” risk.

13.29 **Systematic and Specific Risks:** The Authority has also noted the distinction between a risk that is “systematic” (also called the “market risk”) and the one that is specific for the project in

question. The Australian Competition and Consumer Commission (ACCC) had an occasion to address this issue in its determination of price cap for Adelaide Airport. According to the ACCC, on Systematic and Specific Risk:<sup>3</sup>

*It is worth re-iterating that the purpose of an asset or equity beta is to capture the systematic risk of a company, and not its total risk. Many of the arguments raised in the submissions related to aspects of non-systematic or specific risk. An understanding of the distinction between specific and systematic risk is critical to understanding the role of the CAPM and why the asset beta is supposed to reflect only the systematic component of the risk.*

*Systematic risk is the risk associated with general movements in the market. In particular, it is the co-variance of a company's returns as against the movements in the market as a whole. As such, the systematic risk of a firm is also called non-diversifiable risk, as it is the element of the risk associated with the particular firm that cannot be eliminated through diversification.*

*Specific risk<sup>4</sup>, in contrast, is the risk associated with investing in a particular company, and does not necessarily characterise other companies. Investors are thus able to avoid this risk by investing elsewhere. Specific risk should be taken into account in projected cash flows.*

*In advising the Commission on this issue, Professor Kevin Davis remarked that:*

*The specific risk of an asset or project should be reflected in the expected cash flow projections, not incorporated in to cost of capital estimates in an ad hoc, and ultimately distorting fashion.*

*Turning to the submissions, many of them raised the issue of construction risks of the hitherto unconstructed building. These risks are a good example of specific risks, in that they can be avoided by diversifying. The Commission does not deny that these risks are present, but considers that they are not relevant for the purposes of asset beta.*

13.30 Similarly, According to “Fundamentals of Corporate Finance” by Stephen Ross, Randolph Westerfield and Jordan, (8<sup>th</sup> Edition), McGraw Hill), page 413, uncertainties about general economic conditions (such as GDP, interest rates or inflation) are examples of systematic risks (non-diversifiable). The Authority has proposed to true up the traffic, non-aeronautical revenue, interest rates, and inflation. Hence the elements of systematic risks have been addressed and the systematic risk is practically eliminated or mitigated. Other examples of “unique risk” as given by BIAL, though

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<sup>3</sup> Australian Competition and Consumer Commission, “Adelaide Airport”, Proposal to pass through the price cap the costs of a Multi-User Integrated Terminal, Decision, Oct 1999

<sup>4</sup> Specific risk is also called unsystematic risk, unique risk, undiversifiable risk or residual risk.

devoid of merit are at any rate examples of specific risks (diversifiable) and are not to enter the beta calculations.

13.31 Accordingly as discussed in detail in the tariff determination orders in respect of Delhi and Mumbai airports (Chapter 26 of Order No. 03/2012-13 dated 20<sup>th</sup> April 2012 and Chapter 13 of Order No. 32/2012-13 dated 15<sup>th</sup> January 2013), the Authority proposes to consider the following to estimate the cost of equity in respect of BIAL.

13.31.1 Determination of Asset beta of the airport based on the appropriately chosen comparator set.

13.31.2 The asset beta of the airport to be re-levered using the notional Debt – Equity ratio of 1.5 (equivalent to gearing of 60%).

13.31.3 To calculate equity beta according to CAPM framework.

13.31.4 WACC calculation to be made based on the book values of Debt and Equity.

13.32 The Authority notes that the cost of equity as calculated by the NIPFP report is 11.04% (considering an asset beta of 0.4) after considering the market value of BIAL equity. The Authority also noted that even if the Authority considers an asset beta of 0.51, i.e. the Authority does not consider the reduction of asset beta to 0.4 on account of mitigation of risk factors by the Authority, and follows the calculation of NIPFP, the cost of equity comes out to be 12.02%. Further, if the Authority assumes a normative debt equity ratio of 1.5:1 and not the NIPFP assumption of 1:3.73, then the cost of equity comes out to be 15.91%. The Authority therefore observes that its methodology and estimation of cost of equity appear to be sufficiently robust. Rounding it to 16% thus appears to the Authority as an appropriate fair estimate of the cost of equity for BIAL.

**13.33 Risk Mitigating Measures relevant to Bengaluru International Airport:** Return on equity is based on the risk profile of a particular project or airport. The Authority has carefully considered the factors impacting the riskiness of BIAL as also the de-risking measures proposed to be adopted in respect of BIAL. The Authority notes that in addition to the many de-risking measures contained in this Consultation Paper and presented below (that are not available for airports in the comparator set), land for monetization (made available by the State Government) can also be considered as an important specific measure aimed at reducing the risk associated with raising capital for the project. The various risk mitigating measures that were put in place by the GoI and GoK and what the Authority is now proposing in this Consultation Paper for Stakeholders' consultation include:

**13.34 Risk mitigating measures put in place by GoI:**

13.34.1 Closure of commercial and civil operations at the existing HAL Airport guaranteeing traffic at the airport. Apart from guaranteeing traffic at the new Airport, BIAL is not expected to compensate to AAI / GoI for the loss of revenue from the closure of existing profitable HAL

Airport. Unlike in case of DIAL and MIAL that contribute 46% and 39% respectively as Revenue Share to AAI (and this not being a cost pass through), BIAL pays a fee (Revenue share) of only 4% to Gol which is a cost pass through and its payment is deferred for the first 10 years of operation. After the commencement of operations of the Bengaluru International Airport (May 2008), AAI has been deprived of the year on year surplus, a loss that was not required to be compensated by BIAL. This can be deemed as support provided by AAI/ Gol to BIAL in Public Interest (Refer to Para 26.89 below for further discussion on the relative contributions of Private Promoters as well as that of the State entities).

13.34.2 The Govt. of India has stipulated that no new or existing airport shall be permitted by Gol to be developed as, improved or upgraded into an international airport within an aerial distance of 150 kms of the airport before the 25<sup>th</sup> anniversary of the Airport Opening Date. Similar stipulation has also been made for domestic airport. These stipulations have mitigated the threat of competition for BIAL. It has also, therefore, given it a kind of monopoly within an aerial distance of 150 kms. The Authority has noted the observations of Prof Forsyth in “Airport Policy in Australia and New Zealand: Privatization, Light-Handed Regulation, and performance”, in Aviation Infrastructure Performance Ed Clifford Winston and Ginés de Rus 2008. According to Prof Forsyth, *“To have countervailing power, a buyer must have a feasible alternative source of supply to which it can credibly threaten to shift its business.....If an airline wishes to fly in and out of Sydney, it must use the Sydney airport—there is no viable alternative airport within 150 kilometres. The Australian Productivity Commission considered that the major airports possessed significant market power”*. Hence a distance of 150 kms was considered adequate for lack of countervailing power by the airlines and thus mitigating risk of competition. This measure has been taken by the Gol to assure BIAL of traffic both in terms of passengers and cargo. On the part of the Authority, it has also been proposed to true up passenger traffic so that the risk to the airport on this account would get completely mitigated.

13.34.3 Concession fee (to be paid by BIAL to Gol) being a nominal rate of 4% and that too deferred to be payable only from 10<sup>th</sup> year onwards and is also treated as a cost pass through.

13.34.4 Gol has expressly provided that User Development Fee can be charged both for revenue as well as capital requirements. This, in fact, substantially mitigates the risk to which the airport is exposed. Gol has actually used this measure and granted appropriate UDF for domestic and international passengers. Operation of UDF ensures that BIAL would be able to get fair rate of return since UDF is a revenue enhancing measure and can be considered a kind of “top up” of the revenue which enables the airport operator to get a fair rate of return.

13.35 **Risk mitigating measures put in place by GoK:** GoK has agreed to provide financial support to improve the viability of the Project and enhance the bankability of the Initial Phase and has also

agreed to have KSIIDC provide the site on lease to BIAL.

13.35.1 The GoK sanctioned substantial financial aid of Rs. 350 crores and disbursed Rs. 335.5 Crores as interest free loan. This needs to be viewed against the amount of equity of Rs. 384.6 crores wherein AAI and GoK put together a share of Rs. 100 crores. Hence, the private equity at BIAL airport is of the order of Rs. 284.6 crores. The basic purpose of GoK infusing of financial assistance into the project was to mitigate the financing risk during the construction of the project. At the same time, the debt burden has also been brought down by the interest free loan.

13.35.2 Support from the State Government in infrastructure in terms of road access, power supply and water supply.

13.35.3 Airport land made available at concessional rental - The GoK, through KSIIDC, has leased land of around 4008 acres after acquiring the same from private cultivators. Hence this is another factor which mitigates the risk in terms of ready availability of land on concessional rental terms. The land lease deed provides for its exploitation to *“improve the commercial viability of the Airport Project”*. The Land Lease Deed also provides that one of the purposes of land use is that it is *“conducive or incidental to implementation of the Project”*. The Project is defined to mean *“the design, **financing**, (emphasis added) construction, completion, commissioning, maintenance, operation, management and development of the Airport”*. Hence, clearly the land is to be used also for any future capital needs for expansion, as and when they arise (apart from improving the commercial viability of the Airport Project). In fact the Authority’s aeronautical tariff determination makes the airport feasible in itself, even without taking the revenues from the commercial exploitation of the excess land.

### 13.36 Risk mitigating measures proposed by the Authority for Stakeholders Consultation:

13.36.1 Truing-up of traffic (This transfers the risk of economic downturn from Airport Operator to the passengers)

13.36.2 Truing-up of non-aeronautical revenue,

13.36.3 Review of cost of debt on reasonable evidence, if provided by BIAL

13.36.4 Truing up of capital expenditure upon review

13.36.5 Truing-up of Operating Expenditure (upon review; Clause 8.9 of the Concession Agreement regarding *“manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking”*) and also submissions of BIAL in Para 17.44 below.

13.36.6 Truing up the gearing for computing WACC based on actual numbers (changes in WACC on account of changed Debt: Equity ratio and Cost of Debt after review)

13.36.7 Determination of UDF at a level that assures the airport operator a fair rate of return (which includes return on equity consistent with the risk profile).

13.37 **Competition and the Cost of Capital:** The Authority has also noted a report by Oxera prepared for Gatwick Airport<sup>5</sup>, regarding the interplay between Cost of Capital and Competition. The report states that:

*“The impact of competition on the cost of capital has been extensively researched. A variety of measures of competition and market power have been used, with studies concluding that there is a negative relationship between the level of monopoly power and beta. For example:*

*A higher degree of monopoly power in the product market will unambiguously lower the systematic risk of a firm, ceteris paribus. ..Based on the CAPM, the firm with a higher market power in its product market can raise capital at a lower cost (by means of a lower required rate of return).<sup>6</sup>*

*Other research has reached similar conclusions.<sup>7</sup> The relationship runs in reverse, such that, as the number of actively competing firms in an industry increases, the systematic risk of the firms increases. This suggests that, regardless of the precise nature of the competitive dynamics following the break-up of BAA, these dynamics will have increased the systematic risk exposure of the London airports as a group.*

13.38 Another element of competition and systematic risk is indicated by Oxera in its latest (Jan 31, 2013) report.<sup>8</sup> It says that:

*The market clearing revenue yield would be expected to respond to systematic demand shocks. Where competitive forces are relatively weak and the price-cost mark-up is relatively high, the percentage change in revenue per passenger will be relatively low for any given size of demand shock. In contrast, a more competitive environment and a lower price-cost mark-up entail a relatively large change in revenue per passenger for an equivalent size of demand shock. This is the mechanism through which, in an unregulated market, a higher degree of competition translates into higher asset betas for all companies operating in a particular market.*

*In the context of regulated airports, the increased exposure to systematic risk that results from more competition is manifested in an increased probability that the airports will not*

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<sup>5</sup> “How has the risk of Gatwick Airport changed since the start of Q5?”, Note prepared for Gatwick Airport, December 12, 2012, Oxera, section 3.5 as well as its January 2013 report referred in Para 13.38

<sup>6</sup> Lee, C., Liaw, K. and Rahman, S. (1990), ‘Impacts of Market Power and Capital-Labor Ratio on Systematic Risk: A Cobb-Douglas Approach’, Journal of Economics and Business 42, p. 240.

<sup>7</sup> Chen, K., Cheng, D. and Hite, G. (1986), “Systematic Risk and Market Power: An Application of Tobin’s q” Quarterly Review of Economics and Business, 26:3. Subrahmanyam, M. and Thomadakis, S. (1980), ‘Systematic Risk and the Theory of the Firm’, The Quarterly Journal of Economics, 94:3

<sup>8</sup> “What is the cost of capital for Gatwick Airport beyond Q5?”, Methodology and estimation, prepared for Gatwick Airport, Jan 31, 2013.

*be able to price up to the aeronautical yield cap. For Heathrow, Gatwick and Stansted, achieving a sufficiently large markup over marginal cost—by pricing to the yield cap—is essential for the recovery of fixed and sunk costs. The impact of competition therefore is to increase the expected volatility of return on assets, and to increase the sensitivity of return on assets to economic shocks.*

13.39 The Authority notes that the airport of Bangalore has not shown any indication that it will be **not** be able to charge price up to the aeronautical yield cap. It has been able to charge the UDF as was given to it by the Government. BIAL has further proposed, in its submissions to the Authority that the domestic UDF under Single Till to be 339% of the existing rates and the International UDF to be 179% of the existing rates (w.e.f 1<sup>st</sup> May 2013). In Dual Till, these percentages are 748% and 179% respectively (Refer Table 126). The Authority assumes that BIAL's analysis must have taken into account that market can bear its proposed UDF. Secondly, the truing up mechanisms for Traffic, Non-Aeronautical Revenues, Operating Expenditure and Cost of Debt as has been proposed by the Authority has all but eliminated the sensitivity of return on assets to economic shocks. This should be expected to put a strong downward pressure on the riskiness of Bengaluru International Airport and consequently, its asset beta. With the various risk mitigating measures undertaken by the GoI, GoK and proposed by the Authority, the asset beta of 0.51 for Bengaluru International Airport, is in the opinion of the Authority both reasonable and also has generous allowance for the uncertainties associated in estimating the different elements that go into its calculation.<sup>9</sup>

13.40 **Risk Mitigants**<sup>10</sup>: There are several regulatory tools for mitigating risk. Risk mitigants may not reduce the overall level of risk. Rather, they might allocate them somewhere else. Where these tools allocate risk to or away from the providers of capital, this may have an impact on the appropriate level of reward that is necessary for the provider of capital.

13.41 The Authority notes that with the proposed risk mitigating measures like truing up of traffic, Non-Aeronautical Revenue, operating and maintenance expenditure and interest rates (subject to review), the risk has been effectively transferred from the airport operator and the providers of capital to the passengers. This should reflect in downward pressure on the asset beta of the Bengaluru International Airport.

13.42 Considering all the risk elements that according to BIAL allegedly enhance the risk of Bengaluru International Airport, it would appear that, taking into account the measures put in place by GoI and GoK and if the Authority's proposals of truing up various parameters are accepted, subject to Stakeholders' consultation, these risks would get effectively almost mitigated /

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<sup>9</sup> The recommendation of NIPFP, after taking into account the risk mitigating measures, for the Asset Beta of Bengaluru International Airport was 0.40

<sup>10</sup> "Cost of capital and risk mitigants –a discussion paper", OFWAT UK 2011



eliminated. Hence none of these risks, in such a case, would be relevant for BIAL. In light of the above and considering that in the current control period, the Authority has proposed to give some allowance for the uncertainties in estimation of different parameters, the Authority proposes to consider the Cost of Equity at 16%. The Authority feels that the rate proposed is reasonable for the current control period and provides for sufficiently generous allowance for any uncertainty in estimation of various parameters.

13.43 The Authority also notes that there will be no impact of considering a Dual Till regime on the cost of equity calculations.

**Proposal No 8. Regarding Cost of Equity**

**8.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To calculate asset beta for Bengaluru International Airport based on the comparable airports as per the report by NIPFP and thus proposes to consider asset beta for Bengaluru International Airport at 0.51 as an upper bound since this does not discount for the various risk mitigating measures.**
- ii. To re-lever the asset beta of BIAL at the Notional Debt-Equity Ratio of 1.5:1. (Gearing of 60%)**
- iii. To calculate equity beta according to CAPM framework.**
- iv. To consider Return on Equity (post tax Cost of Equity) as 16% for the WACC calculation – both under Single Till and Dual Till.**

## 14 Weighted Average Cost of Capital (WACC) / Fair Rate of Return

### (a) BIAL's submission on Weighted Average Cost of Capital

14.1 BIAL has submitted that under Single Till, FRoR for the first control period is 15.41% considering the weighted average cost of debt to be 11.0% and the Cost of Equity to be 24.4%. Projected Weighted average gearing considered for the first control period is considered at 67.1% as per the details given below:

**Table 42: Computation of Fair Rate of Return submitted by BIAL under Single Till**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Closing balance of Debt	1,461.67	2,154.97	2,015.24	2,153.83	3,311.25
Closing balance of Equity	686.90	867.19	1,075.56	1,264.47	1,547.87
Gearing Ratio	68.03%	71.31%	65.20%	63.01%	68.15%
Cost of Equity	24.40%	24.40%	24.40%	24.40%	24.40%
Weighted average gearing	67.10%				
Weighted average cost of debt	11.00%				
Fair Rate of Return	15.41%				

14.2 Also, BIAL has submitted that under Dual Till, the FRoR for the first control period is 17.09% considering the weighted average cost of debt to be 10.71% and the Cost of Equity to be 24.4%. Projected Weighted average gearing considered for the first control period is considered at 53.40% as per the details given below:

**Table 43: Computation of Fair Rate of Return as submitted by BIAL - Dual Till**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Closing balance of Debt	1461.67	2154.97	1983.24	1726.14	2148.70
Closing balance of Equity	849.92	1197.78	1600.50	2023.79	2595.64
Gearing Ratio	63.23%	64.27%	55.34%	46.03%	45.29%
Cost of Equity	24.40%	24.40%	24.40%	24.40%	24.40%
Weighted average gearing	53.40%				
Weighted average cost of debt	10.71%				
Fair Rate of Return	17.09%				

14.3 Debt and equity considered for computing the weighted average gearing has been considered as follows:

14.3.1 Projected volume of debt, excluding working capital borrowing, at the end of each year in the control period has been considered. This includes balances arising from the Term loans availed and proposed to be availed and the outstanding State Support loan yet to be repaid.

14.3.2 Projected volume of Shareholders funds at the end of each year in the control period has been considered. This includes Share capital issued and paid up and the retained earnings

projected at the end of each of the five years in the control period, based on the proposed return computed as per the Business Plan submitted.

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Gearing Ratio:

14.4 BIAL has submitted as follows

*“For the purpose of computing debt to equity ratios, security deposits may be treated as quasi-equity and hence may be included under the head equity and Interest free loans and cost of debt may be treated as debt”*

**(b) Authority’s examination of BIAL’s submission on Weighted Average Cost of Capital**

14.5 The Authority has duly considered and analysed BIAL’s submissions on cost of debt and cost of equity in Para 12 above and 13 above respectively, and then has examined the calculation of WACC submitted by BIAL. The Authority’s examination of the issue is as follows:

14.6 The Authority has carefully reviewed BIAL’s submission on “Quasi Equity”. The Authority has not found the term Quasi Equity defined in any economic literature. The term “Quasi equity” is primarily for banks and Financial Institutions – for computation of the Debt Service Coverage Ratio etc and possibly for computation of eligibility and not for the purposes of computing the Gearing. However the Debt equity ratio is calculated as Total Long term Debt: Total Shareholder Funds and the gearing is also to be computed accordingly. Hence the Authority is not convinced of BIAL’s submission on considering the Security Deposits as “Quasi Equity”

14.7 The Authority, in its Airport Guidelines and Airport Order, has outlined the principles for calculation of WACC as part of the exercise of determination of tariff for aeronautical services. The Authority has provided that the fair rate of return for a control period, as its estimate of weighted average cost of capital for an airport operator, is to be considered as follows:

$$FRoR = (g * R_d) + ((1 - g) * R_e)$$

Where g is gearing (i.e. debt / debt + equity)

$R_d$  is the pre-tax cost of debt

$R_e$  is the post-tax cost of equity

14.8 In the Airport Guidelines, the Authority has further provided that a weighted average gearing in a control period will be determined for the purpose of determination of FRoR. The determination of such weighted average gearing has reference to actual and projected quantum of debt submitted by the Airport Operator. The calculation of such weighted average gearing is based on the forecast quantum of debt and equity for each Tariff Year in a Control Period. The calculation of weighted average gearing is as follows:

- $Weighted\ average\ gearing = \frac{\sum_{t=1}^5 (C_t \times G_t)}{\sum_{t=1}^5 C_t}$

Where,  $t = 1$  to  $5$  denotes each Tariff Year in the Control Period

14.9 The Authority has considered the issue of calculation of WACC. It is cognizant of the fact that this should reflect the audited figures of the company as appearing in the financial statements as well as, to the extent feasible, have regard to Generally Accepted Accounting Principles. The Authority is informed that WACC is regarded as weighted average cost of the application of funds for fixed assets as are reflected in the balance sheet.

14.10 Authority notes that the values of Debt and Equity considered for the 5 year control period is based on the projected Yield and hence do not match with the details as per the audited financial statements for the periods 2011-12 and 2012-13. The Authority proposes to consider the gearing of Debt and Equity based on the actual results for the period 2011-12 and 2012-13.

14.11 The Authority's proposals in respect of cost of debt and cost of equity is presented in Para 12 above and Para 13 above

14.12 As stated earlier in Proposal No. 8.a above, the Authority has proposed considering the Cost of Equity at 16%

14.13 Based on the above approach and all proposals of the Authority, the Authority proposes to compute the Weighted Average Cost of Capital for BIAL under Single Till and Dual Till as under.

14.14 In view of the above, and the earlier observations on Cost of Debt and Cost of Equity, the Authority proposes to rework the Fair Rate of return considering the following:

14.14.1 Weighted average Cost of Debt at as per Para 12 above

14.14.2 Cost of Equity at 16% as per Para 13 above

14.14.3 Gearing to be considered based on the audited Balance sheet for 2011-12 and 2012-13 and the proposed closing balance of Debt and Shareholders funds standing as per the Projections in the Balance sheet at the end of every year.

14.15 Based on the above approach and all proposals of the Authority, the Authority proposes to compute the Weighted Average Cost of Capital for BIAL under Single Till and Dual Till as under.

**Table 44: Recomputed Fair Rate of Return under Single Till**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Closing balance of Debt	1461.55	2149.79	2464.75	2190.45	3257.40
Closing balance of Equity	604.66	707.69	762.75	1271.80	1541.57
Gearing Ratio	70.74%	75.23%	76.37%	63.27%	67.88%
Cost of Equity	16.00%	16.00%	16.00%	16.00%	16.00%
Weighted average gearing	70.21%				
Weighted average cost of debt	10.04%				
Fair Rate of Return	11.82%				

**Table 45: Recomputed Fair Rate of Return under Dual Till**

<b>Particulars</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Closing balance of Debt	1461.65	2149.79	2281.83	2364.47	3297.65
Closing balance of Equity	604.60	707.69	927.77	1106.38	1533.44
Gearing Ratio	70.74%	75.23%	71.09%	68.12%	68.26%
Cost of Equity	16.00%	16.00%	16.00%	16.00%	16.00%
Weighted average gearing	70.31%				
Weighted average cost of debt	10.04%				
Fair Rate of Return	11.81%				

14.16 It may be noted that the workings of Fair Rate of Return computed by the Authority as per Table 44 and Table 45 are under the assumption that additional fund requirements, if any, will be contributed by the Shareholders of the company as computed by the Model.

**Proposal No 9. Regarding Weighted Average Cost of Capital**

**9.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To calculate WACC, for the purposes of calculating Average Revenue Requirement, based on the audited balance sheet items like debt, equity, Reserve & Surplus as well as any other means of finance.
- ii. To calculate WACC as per Table 44 under Single Till and as per Table 45 under Dual Till (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current control period. The Authority has already given its proposal regarding the ceiling on cost in its Proposal No 7 above

## 15 Taxation Issues

### (a) BIAL's submission on Taxation

15.1 BIAL has submitted that they are entitled to a tax holiday under Section 80 IA of Income Tax Act for 10 years in the period of first 15 years of operations. During this period, they are required to pay the Minimum Alternate Tax on the Book Profits of the company. BIAL has submitted that they propose to avail this tax holiday from the Financial Year 2012-13 for a period of 10 years. During the 5 years of the control period, BIAL proposes that they will be paying only the Minimum Alternate tax (MAT) as applicable. Rate of MAT has been considered at 20% for the control period by the company.

15.2 Accordingly the MAT payments proposed to be included as part of the Aggregate Revenue Requirement, as submitted by BIAL is as detailed below under Single and Dual Till is given below. Tax computation under Dual Till has been made based on the Aeronautical P&L statement prepared by BIAL.

**Table 46: Details of Tax payments proposed, submitted by BIAL – Single Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	60.65	45.07	52.09	47.23	70.85

**Table 47: Details of tax payments proposed, submitted by BIAL - Dual Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	105.64	78.36	92.02	98.77	134.21

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Taxation and Authority's response thereon:

15.3 BIAL has submitted as follows:

#### *36. Taxation*

*Authority's Approach: In clause 6.17 of Direction No.5, the Authority has proposed not to consider increase in tax on corporate income or change in statutory operating cost relating to input products or services procured by the airport operator.*

*Observations: Non-consideration of change in taxes on corporate income or taxes in relation to input products or services is unfair. The airport operator cannot be forced to bear the brunt of additional taxes. There appears to be rationale missing in allowing for recovery of certain taxes, while not allowing for recovery in respect of other forms of taxation. Unlike what is stated in the affidavit of the Authority filed in Appeal No.7, there*

*is no scope for the airport operator to reduce such losses. To illustrate, there is no means by which the airport operator can reduce exposure to an increase in fuel prices or account for it even before its occurrence.*

*Submissions: The Authority is requested to consider error correction with respect to any direct or indirect increase in taxes either on the airport operator or through increase in taxes for inputs and services, within the same control period.*

**(b) Authority's examination of BIAL's submission on Taxation**

15.4 Authority has carefully reviewed BIAL's submission on Taxation as proposed in the guidelines and proposes to True up Taxation costs for this control period based on the Actuals incurred during the Control period as an adjustment at the beginning of the next Control Period.

15.5 As per Clause 5.5.1 of Direction 5, Taxation represents payments made by the Airport Operator in respect of Corporate Tax on Income from Assets / amenities/ facilities/ services taken into consideration for determining of Aggregate Revenue Requirement. The Authority shall review forecast for corporate tax calculation with a view to ascertain the appropriateness of allocation and calculations thereof. Also, it is clarified that any interest payments, penalty, fines and other such penal levies associated with corporate tax, shall not be taken into account for calculation of Taxation. The Authority notes that the MAT is the tax payment that the company has to pay every year, based on the book profits. Company has computed the MAT on the Projected Profit & Loss statement for the 5 years from 2011-12 to 2015-16.

15.6 The Authority notes that the payment projected, for the year 2011-12 and 2012-13 (Rs. 60.7 crores and Rs. 45 crores respectively) is higher as compared to the actual MAT payment for 2011-12 and 2012-13 (Rs. 36 Crores and Rs. 21 crores respectively) as can be seen from the Financial Statements of the company. This is mainly on account of the Revenue from Aeronautical services being considered differently (based on the Projected Yield) as compared to the actual Aeronautical Revenue collected by the company. The Authority takes cognizance of this difference.

15.7 The Authority also notes that BIAL, in its Aeronautical P&L has considered the revenue from Aviation Concessions as part of the Aeronautical revenues by BIAL and accordingly computed the tax on the profits. The Authority notes that the same is incorrect as the revenues from Aviation Concessions have been reckoned as Non-Aeronautical Revenues under the Dual Till model and hence the tax on such revenues should not be considered for compensation under the Dual Till. The Authority proposes to correct the same.

15.8 The Authority also notes that the MAT payment has not been considered as Tax expense in their financial statements in view of the possible credit being available to set off the same against future tax liabilities payable.

15.9 Clause 5.5.1 of the Airport guidelines state that:

*“Taxation represents payments by the Airport Operator in respect of Corporate Tax on Income .....”*

**15.10** Hence the MAT computed and projected is proposed to be allowed as expenditure, on the basis of payment. The credit if any availed by the company in setting off the future tax payments projected, is proposed to be adjusted in the respective tax payment of the future years.

**15.11** The Authority proposes to true up the taxes actually paid by BIAL. If some of the building blocks (notably operation and maintenance expenditure, etc.) are not trued-up, the Authority is cognizant of the circumstance that BIAL may pay higher or lower actual tax on this account. However, the Authority proposes to still take the actual tax paid for the purposes of determination of aeronautical tariff.

**15.12** The revised taxation numbers, based on the corrections made to the Dual Till model and the resultant taxes considering other adjustments to Yield, as have been elaborated in different building blocks are as given below:

**Table 48: Revised tax numbers considered for reimbursement - Single Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	32.05	24.52	23.05	3.63	28.72

**Table 49: Revised tax numbers considered for reimbursement - Dual Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	22.37	17.71	20.75	9.82	32.88

**Proposal No 10. Regarding Taxation**

**10.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To consider estimated taxes computed as per the Business model, after correction to the Dual Till model, for the period 2011-12 to 2015-16 based on the revenues arrived at based on the Yield computed, as detailed in Table 48 and Table 49. To note actual tax paid / payable is according to MAT on account of 80 IA benefit availed by BIAL as per the Concession Agreement terms.**
- ii. To true up the difference between the actual corporate tax paid and that used by the Authority for determination of tariff for the current control period. The Authority proposes that this truing up will be done in the next control period commencing 01.04.2016.**



- iii. **To note that there may be difference in actual taxes paid in Single Till and Dual Till approaches.**

## 16 Working Capital and Interest thereon

### (a) BIAL's submission on Working Capital and Interest thereon

16.1 In its Multi Year Tariff Proposal, BIAL has submitted that a Working Capital Facility is proposed to be taken as per terms given hereunder:

16.1.1 Working capital facility considered from 2013-14

16.1.2 Interest considered at 14% of the Working capital balance proposed

16.2 Accordingly the Working Capital loan balance proposed during the control period and the amount of Interest considered for claim is as given below:

**Table 50: Working Capital Interest claim submitted by BIAL - Single Till – Rs. Crores**

Particulars	2013-14	2014-15	2015-16
Working Capital Facility balance	56.47	71.75	82.67
Interest considered as part of ARR	7.91	10.04	11.61

**Table 51: Working Capital Interest claim submitted by BIAL - Dual Till – Rs. Crores**

Particulars	2013-14	2014-15	2015-16
Working Capital Facility balance	59.80	75.68	87.30
Interest considered as part of ARR	6.90	8.75	10.12

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Working Capital Loans:

16.3 BIAL has submitted as follows:

#### *23. Working Capital Loans:*

*Authority's Approach: In clauses 6.7 and 7.11 of Order No.13, clauses 5.1.4(d) read with 5.4.3 of Direction No.5, the Authority has proposed that the airport operator should submit to the Authority the proposed levels of working capital requirements and should demonstrate that the working capital loans are not excessive. The Authority has also proposed that it shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as appropriate.*

*Observations: Working capital loans/short term loans are availed to meet immediate financing requirements. As a general rule, borrowers do not avail working capital loans unless the same is absolutely necessary in view of the high rate of interest. Even lenders do not easily grant working capital loans without detailed scrutiny. Standard application forms used by banks / financial institutions for grant of working capital loans indicate the wide array of factors that banks / financial institutions consider while granting working*

*capital loans. Banks / financial institutions undertake a scrutiny of the business necessity prior to granting working capital loans. Thus, the conditions and processes generally adopted for sanctioning of working capital loans demonstrate self-regulation.*

*Submissions: The Authority need not enquire into the appropriateness of working capital loans availed. Such enquiry would impede entrepreneurial freedom and enterprise, apart to being not necessary, because of a self-regulated market. So long as working capital loans have been obtained by the airport operator in a competitive manner, inter alia by calling for quotations from multiple banks / financial institutions, the Authority need not review or seek justifications with respect to working capital loans. For services other than regulated services, there should be no regulation whatsoever including with respect to obtaining short term / working capital loans.*

**(b) Authority's examination of BIAL's submission on Working Capital and Interest thereon**

16.4 The Authority has carefully considered the submissions made by BIAL on working capital loans.

16.5 Clause 5.4.3 of Direction 5 under Operation and Maintenance Expenditure details the direction for claim of Working Capital Interest as follows:

*"The Authority shall consider interest on short term loans, generally raised towards working capital with a maturity of less than one year, as operation and maintenance expenditure to address the working capital requirement. The Airport Operator shall submit to the Authority the proposed levels of working capital requirements and shall demonstrate that the proposed working capital loans are not excessive in relation to such levels of working capital. The Authority shall not consider any allowance provided for allocations for bad debts in the working capital. The Authority shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as deemed appropriate. However, such loans would not be considered in the calculation of the cost of debt."*

16.6 The Authority has carefully reviewed the submission made by BIAL on Working Capital Loans that *"the Authority need not enquire into the appropriateness of working capital loans availed."* Authority's reply to this is similar to the reply on Cost of Debt and Refinancing as given in Para (b) above, as BIAL has submitted similar suggestions on Authority not needing to delve on the Working Capital Requirements and process of obtaining the loan.

16.7 The Authority notes that BIAL currently does not have a Working Capital Facility. Pursuant to a query raised by the Authority, BIAL has submitted that the Interest on Working capital facility is based on the earlier sanction obtained by it. The Authority notes that the sanction letter indicates an

interest of Bank PLR minus 1% and the current SBI PLR is around 14.5%.

16.8 While there may be requirement to avail a working capital facility, as proposed by BIAL, as the facility has not been available by BIAL as yet, the details of the same and the actual quantum of loan that may be availed by BIAL is not clear. Hence this expenditure, while may be allowed based on the projections made by BIAL, will require trueing up based on the actual facility availed, Interest rate on the loan and the actual cost paid.

16.9 Considering the other changes to Business Plan, as elaborated in the other Building blocks, the reworked Working Capital Facility balance and interest on the same is recomputed as follows:

**Table 52: Revised working Capital interest computed by the Authority - Single Till – Rs. Crore**

<b>Particulars</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Working Capital Facility balance	51.83	66.22	76.59
Interest considered as part of ARR	7.26	9.27	10.75

**Table 53: Revised working capital interest computed by the Authority - Dual Till – Rs. Crore**

<b>Particulars</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Working Capital Facility balance	52.74	67.30	77.87
Interest considered as part of ARR Rs. Crore	6.09	7.78	9.04

**Proposal No 11. Regarding Working Capital Interest**

**11.a. Based on the material before it and its analysis, the Authority proposes:**

**To consider the working capital loans, with the interest cost computed as given in Table 52 and**

- i. Table 53 to be allowed as part of the Expenditure**
- ii. To true up this Working Capital Interest Expenditure based on the actual costs incurred by BIAL during the control period, at the beginning of the next control period.**

## 17 Operating and Maintenance Expenditure

### (a) BIAL's submission on Operating and Maintenance Expenditure

17.1 BIAL has in its submission dated 17<sup>th</sup> May 2013 provided the details of cost break-up between Aeronautical and Non-Aeronautical Expenditure. These are given below.

*Concept document – bifurcation of costs into Aero & Non Aero*

#### *1. Introduction:*

*Clause 10.2 of the Concession Agreement signed between the Ministry of Civil Aviation (MoCA) and BIAL defines the set up and approval procedures applicable for Airport Charges.*

#### *2. Segment Reporting:*

*BIAL is structured on the basis of functional criteria. For segment reporting purposes, a distinction is made between Aeronautical and Non Aeronautical as primary segments, which correspond to the functions of Operations and Commercial*

#### *3. Objective:*

*Define concepts for classification of costs into aeronautical and non-aeronautical segment and adopt the same for tariff workings*

#### *4. Classification of REVENUE into aeronautical and non-aeronautical segment:*

*Pursuant to the principles set out in Article 10.2 of Concession Agreement, BIAL shall be entitled to levy and recover from airline operators, passengers and other users and in respect of both domestic and international aircraft and passenger movements, at rates consistent with ICAO polices, the following Regulated charges:*

*Landing charges*

*Parking & Housing*

*PSF (Facilitation)*

*UDF (Aeronautical deficit to be recovered thro' UDF)*

*Non-aeronautical revenue: Non-aviation encompasses all activities relating to the development, marketing and operation of commercial infrastructure at BIAL. This segment earns revenue from the following sources through commercially negotiated concession agreements, rental agreements and direct charges for parking or the use of other facilities.*

*Landside traffic*

*Parking*

*Limousine & Taxi*

*Rental cars*

*Terminal entry charges*

*Retail*

*International departure & arrival*

*Domestic departure*

*Landside shopping*

*Foreign exchange*

*Food & beverage*

*International departure*

*Domestic departure*

*Advertising and promotions*

*Rents and Land leases*

*ICT (Information & communication Technology)*

*Aviation concessions*

*Cargo*

*Fuel through charges*

*Fuel into plane services*

*Flight catering*

*5. Classification of COSTS into aeronautical and non-aeronautical segment*

*BIAL have classified costs as under:*

*Personnel expenses*

*Operations & Maintenance*

*Land Leases*

*Utilities*

*Insurance*

*Consultancy / Advisory*

*General & Administration costs*

*Depreciation & amortization*

*Financing costs*

*BIAL has adopted the following philosophy in classifying of costs into aeronautical and non-aeronautical segment*

*Headcount base*

*Detailed cost centre structure*

*Estimated time spent for Aero & non-aero by common departments*

*Asset base*

*Revenue ratio*

*Personnel expenses: This includes cost related to salary, employee transportation, uniform, education and training, recruitment, outsourcing, welfare expenses etc. Classification of personnel expenses have been done based on budgeted headcount for 2011-12 and detailed cost center structure.*

<i>Department</i>	<i>Cost Centres</i>	<i>Cost Allocation</i>
<i>Corporate</i>	<i>President – Airport Operations, Finance, Human Resources, Administration, Company Secretary &amp; Legal, Corporate communications &amp; Corporate Affairs. President – Airport Operations, Finance, Human Resources, Administration, Company Secretary &amp; Legal, Corporate communications &amp; Corporate Affairs</i>	<i>75% &amp; 25% (Aero &amp; Non Aero)</i>
<i>Operations</i>	<i>Director - Operations, Operations co-ordination, Daily operations, Aviation Marketing, Aviation safety, ARFF, Security, Planning &amp; statistics &amp; Information Technology</i>	<i>100% allocation to Aero segment</i>
<i>Engineering &amp; Maintenance (E&amp;M)</i>	<i>VP – E&amp;M, Technical co-ordination, Maintenance – Building, Special equipment, Water supply, Services, Airfield maintenance – Civil, Electrical, Power Systems, Services</i>	<i>75% &amp; 25% (Aero &amp; Non Aero)</i>
<i>Commercial</i>	<i>VP - Commercial, Landside traffic, Facilities, Commercial Center Management, Marketing and advertising</i>	<i>100% allocation to non-aero segment</i>

*Operations and Maintenance: This represents cost related to maintenance of equipment and cost of services provided at the Airport. Classification of costs has been done based on the ratio 85% & 15% (Best estimate)*

*Land Leases: This represents the lease rent payable to KSIIDC for the land provided for the airport. Classification of costs has been done based on the revenue ratio (76% & 24%)*

*Utilities: This represents costs (net of recoveries) for the energy consumption. Classification of costs has been done based on the revenue ratio (76 % & 24%)*

*Insurance: This represents costs related to various insurance covers taken for the airport and equipment. This includes the Industrial All Risk policy, Aviation Liability policy, EAR policy etc. Classification of costs has been done based on the revenue ratio (76% & 24%)*

*Consultancy / Advisory: This represents costs towards estimated OMSA fee which is 100% aero related.*

*General and Administration costs: This includes cost towards Marketing and Advertising, Office costs, consultancy others (certification, audit expenses, legal, taxation, technical) and other general costs. Classification of costs has been done based on the ratio 85% & 15% (Best estimate)*

*Depreciation & amortization: As per Fixed Asset Register, based on BIAL depreciation policy.*

*Financing Costs: This includes cost towards interest on the various loans availed by BIAL and other charges for the availment of the said loans. Classification of costs has been done based on the asset base of each segment (81% & 19%)*

17.2 Operating and Maintenance expenditure submitted by BIAL is segregated into

- 17.2.1 Staff costs
- 17.2.2 Operating and Maintenance Expenditure
- 17.2.3 Concession Fees
- 17.2.4 Lease Rent
- 17.2.5 Utilities consumption expenditure
- 17.2.6 Insurance
- 17.2.7 Marketing and Advertising and
- 17.2.8 General Administrative Overheads.

17.3 BIAL has submitted details and basis for each of the above proposed expenditure in their submission. A summary of costs proposed by BIAL for the control period is detailed below:

**Table 54: Summary of Operating and Maintenance Expenditure submitted by BIAL - Single Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	79.48	92.49	117.10	144.68	174.48
Operation & Maintenance	38.67	49.31	49.22	82.90	91.12
Concession Fee	25.03	27.73	36.03	45.31	47.88
Lease Rent	6.35	6.35	6.35	6.35	11.78
Utilities	21.61	22.99	31.36	40.35	42.23
Insurance	3.69	4.00	4.84	4.96	5.07
Marketing and Advertising	4.57	5.38	5.91	6.58	7.32
Waivers and Bad Debts	1.22	27.97	9.11	10.56	12.08
OMSA Fee	6.64	11.33	14.61	17.46	17.73
General Administration costs					
Consultancy and Legal	11.20	14.30	15.73	17.30	19.03
Travel Costs	4.10	4.30	4.73	5.20	5.72
Office Costs	7.30	8.20	9.02	9.92	10.91
<b>Total Cost</b>	<b>209.85</b>	<b>274.33</b>	<b>304.00</b>	<b>391.59</b>	<b>445.37</b>



**Table 55: Summary of Operating and Maintenance cost submitted by BIAL under Dual Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	63.73	74.17	93.90	116.02	139.91
Operation & Maintenance	27.82	36.36	33.73	60.69	66.70
Concession Fee	27.74	28.97	36.52	45.10	47.82
Lease Rent	4.88	4.88	4.88	4.88	9.05
Utilities	16.21	17.24	23.52	30.26	31.67
Insurance	2.76	3.00	3.63	3.72	3.80
Marketing and Advertising	4.25	5.03	5.53	6.17	6.88
Waivers and Bad Debts	1.57	30.22	11.72	13.65	15.72
OMSA Fee	6.18	10.17	13.02	15.47	15.79
General Administration costs					
Consultancy and Legal	9.52	12.16	13.37	14.71	16.18
Travel Costs	3.49	3.66	4.02	4.42	4.86
Office Costs	6.21	6.97	7.67	8.43	9.28
<b>Total Cost</b>	<b>174.36</b>	<b>232.81</b>	<b>251.51</b>	<b>323.53</b>	<b>367.66</b>

17.4 Costs considered by BIAL under Dual Till are similar to the costs considered under Single Till, except for:

17.4.1 Concession Fee

17.4.2 OMSA Fee

17.4.3 Bad Debts

which are based on the tariff and the resultant revenues which will be projected.

Analysis of Head-wise costs are dealt with below:

17.5 **Staff Costs** - BIAL has estimated the head count requirement of its permanent staff based on its existing employee base and projected additional requirements for the expansion. The detailed break up in the submission is given below:

**Table 56: Headcount break-up provided by BIAL for the control period**

Departments	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Corporate Centre	42	47	54	60	66
Operations	464	519	571	652	714
Engineering and Maintenance	143	178	196	221	244
Commercial	39	40	44	64	71
Finance	46	51	57	68	75
<b>TOTAL</b>	<b>734</b>	<b>835</b>	<b>922</b>	<b>1065</b>	<b>1170</b>

17.6 BIAL has projected a head count 734 during 2011-12 and 835 during 2012-13 and has thereafter projected the head count to increase by 10% for next three years in the control period for

an average annual increase of 1.4 Million passengers during the control period. In addition, BIAL has projected additional head count of 49 in the year 2014-15 on account of expansion of Terminal 1. As per current plans, Terminal 1 Expansion, is expected to be completed by 2013-14. Accordingly, the head count is planned to increase only in 2014-15.

17.7 BIAL has estimated the staff cost considering the existing salary levels of employees in different grades on Cost-to-Company basis. It has projected an annual increase of 10% on existing levels on a year on year basis during the control period. In addition, BIAL has also considered the following additional costs:

17.8 Staff Variable pay and Incentives @ 24% of the Salary cost

17.8.1 Staff welfare, transportation, training and other costs @ 11% of Salary costs for 2011-12, 2012-13 and 17% of salary cost for the rest of the control period

17.9 Total Personnel cost estimated by BIAL is as follows:

**Table 57: Total personnel cost projected by BIAL**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Head count	735	836	922	1,017	1,121
Cost Rs. Crores	79.48	92.49	117.10	144.68	174.48

17.10 **Operations and Maintenance Expenditure:** Operations and Maintenance expenditure comprises of Operations & maintenance of all the assets of the airport, maintenance of ICT equipment and maintenance of the parking facilities.

17.11 Details of O&M Costs proposed for the control period is as given below:

**Table 58: Summary of O&M Cost proposed by BIAL - Single Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
O&M Cost – Infra	22.13	24.34	29.13	57.64	63.41
O&M Cost – ICT	11.12	12.23	13.46	18.02	19.82
Parking Operator Fee / Trolley Management Charges	3.92	4.10	4.38	4.77	5.17
Other O&M Cost	1.49	8.63	2.25	2.48	2.72
<b>TOTAL</b>	<b>38.67</b>	<b>49.31</b>	<b>49.22</b>	<b>82.90</b>	<b>91.12</b>

**Table 59: Summary of O&M Costs proposed - Dual Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
O&M Cost – Infra	14.32	15.75	17.33	40.05	44.06
O&M Cost – ICT	8.90	9.79	10.76	14.48	15.93
Parking Operator Fee / Trolley Management Charges and other O&M Cost	4.60	10.82	5.64	6.16	6.71
<b>TOTAL</b>	<b>27.82</b>	<b>36.36</b>	<b>33.73</b>	<b>60.69</b>	<b>66.70</b>

17.12 BIAL has classified its asset base into Landside assets, Airfield assets, Utilities (assets pertaining to power & water) and Information Communication Technology equipment. The classified asset base is:

**Table 60: Summary of actual cost of Assets for O&M - Phase 1 of the Project**

Phase I - Asset Categories	Value Rs. Cr.
Landside	949.20
Airfield	542.70
Utilities	213.20
ICT	180.90
<b>Total</b>	<b>1,886.00</b>

17.13 As per BIALs Capital Expansion plans, Terminal 1 expansion, is expected to be completed by 2013-14 and Apron Expansion is proposed to be capitalized in 2012-13. Accordingly BIAL has computed the asset values to be added and BIAL has projected the maintenance costs as a percentage of asset value at the rates given below:

**Table 61: Phase-wise O&M Cost as a % of Assets**

Asset Categories	Phase I	Phase II
Landside	1.53%	1.92%
Airfield	0.73%	2.00%
Utilities	1.71%	3.17%
ICT	6.15%	7.00%

17.14 BIAL has further submitted the following % estimates for the actual maintenance costs incurred in the past periods, pursuant to a query by the Authority

**Table 62: Actual O&M cost as a % of the O&M Assets during the previous years**

Asset Categories	2008-09	2009-10	2010-11	2011-12
Landside	1.40%	1.30%	1.40%	1.80%
Airfield	0.60%	0.20%	0.60%	0.70%
Utilities	1.60%	1.10%	1.60%	1.60%

17.15 Parking Maintenance Fee: Based on the rates contracted with the Parking management agency BIAL has estimated their compensation to be 35% of the expected parking revenues and

accordingly, BIAL has projected the maintenance cost of parking facilities as below:

**Table 63: Parking fee and Maintenance expenditure for Parking proposed by BIAL – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Parking Fee	11.21	11.72	12.52	13.62	14.78
Maintenance expenditure at 35%	3.92	4.10	4.38	4.77	5.17

17.16 BIAL has proposed other O&M costs to be incurred as follows:

**Table 64: Details of Other O&M Costs proposed – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Other O&M Cost	1.49	8.63	2.25	2.48	2.72

17.17 Pursuant to a query by Authority, BIAL has clarified that the O&M Cost proposed for 2012-13 of Rs. 8.6 crores includes Rs. 6.4 Crores towards loss on disposal of assets and that other O&M Costs relate to miscellaneous expenses proposed.

17.18 **Utilities:** Utilities comprises of Electricity charges, Consumption of Water and disposal of waste and Sewage.

17.19 Electricity Charges - Electricity charges/ rates determined are classified by BIAL into Demand charges and Consumption charges. Electricity demand charges are charged on the Contracted Demand in KVA that is required to meet the overall consumption of the consumer. Electricity consumption charges are charged on the actual consumption in units (Kilo Watt Hours) of the consumer.

17.20 BIAL has classified the Airport Areas into

17.20.1 Terminal Buildings,

17.20.2 Airfield / Apron Lighting,

17.20.3 Consumption of Other concessioners,

17.20.4 Other auxiliary buildings

17.20.5 Based on this classification, the consumption projected by BIAL is tabulated below:

**Table 65: Power consumption estimate provided by BIAL**

Estimated Consumption	Power	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
		2011-12	2012-13	2013-14	2014-15	2015-16
Terminal Building	Million kwh	11.00	11.00	11.00	22.00	22.00
Airfield / Apron Lighting	Million					

Estimated Consumption	Power	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
		2011-12	2012-13	2013-14	2014-15	2015-16
	kwh	8.40	9.00	12.00	12.00	12.00
Concessionaires	Million kwh	12.60	13.00	13.00	16.00	16.00
Other Auxillary buildings	Million kwh	13.80	13.80	13.80	13.80	13.80
Total power consumption		45.80	46.80	49.80	63.80	63.80
Concessionaires % to total consumption		27.51%	27.78%	26.10%	25.08%	25.08%

17.20.6 BIAL has included the following key additional consumption in the aforesaid estimation for further expansion projects that are expected to be completed within the control period

**Table 66: Estimate of increase in Power consumption estimates provided by BIAL**

Estimated Increase	Consumption	Increase value	From year
Terminal Building	Million kwh	11	2014-15
Airfield / Apron Lighting	Million kwh	3	2013-14
Concessionaires	Million kwh	3	2014-15
Other Auxillary buildings	Million kwh	-	-

17.21 BIAL has considered the per unit electricity consumption charge at Rs. 6.63 per KWH in 2011-12, Rs. 6.92 per KWH in 2012-13 and an increase of 5% every year thereafter. It has considered demand charges at Rs. 200 per month per KVA, which is expected to increase by 3% in every three years starting from 2011-12.

17.22 Based on this BIAL has projected the following Electricity charges

**Table 67: Estimated power costs projected by BIAL**

Projected Power costs		Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
		2011-12	2012-13	2013-14	2014-15	2015-16
Contracted demand	KVA	11,000	11,000	20,000	20,000	20,000
Connected demand charges	Rs. Per kva	2,472	2,472	2,472	2,546	2,546
Power cost – contracted demand	Rs. Cr.	2.72	2.72	4.94	5.09	5.09
Power Consumption	Million kwh	45.80	46.80	49.80	63.80	63.80
Consumption charges	Rs per kwh	6.63	6.92	7.27	7.63	8.01
Power Cost – Consumption	Rs. Crs.	30.37	32.39	36.18	48.67	51.11

Projected Power costs		Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
		2011-12	2012-13	2013-14	2014-15	2015-16
Total Power costs	Rs. Crs.	33.08	35.10	41.13	53.77	56.20

17.23 BIAL expects to recover 30% of charges from other Concessionaire as against an average consumption of about 26% by other Concessionaires.

17.24 Water Charges - BIAL has considered a Potable water consumption of 1062 KL per day in 2011-12, 1100 KL per day in 2012-13 and 1650 KL thereafter for the rest of the control period. Out of this roughly about 50% is consumed internally for airport operations and the other 50% on account of other concessionaires, the cost of which is to be recovered from them. In addition to potable water, BIAL expect to consume 1000 KL of Raw water per day.

17.25 BIAL has considered

17.25.1 Cost of Rs.70.83 per KL of potable water in 2011-12, Rs. 74.37 per KL of potable water in 2012-13, which is expected to increase by 5% every year for the rest of the control period

17.25.2 Cost of Rs.25 per KL of Raw water which is expected to increase by 5% every year for the rest of the control period

17.26 Based on the BIAL has projected the following costs and recoveries

**Table 68: Summary of Net utility charges proposed by BIAL – Rs. Crores**

Utility costs	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Electricity Charges	33.08	35.10	41.13	53.77	56.20
Potable water costs	2.75	2.99	4.70	4.94	5.19
Raw Water costs	0.91	0.91	0.96	1.01	1.06
Recovery of Electricity Charges	13.75	14.52	13.06	16.88	17.61
Recovery of Potable water costs	1.38	1.50	2.36	2.48	2.61
Net Utility costs	21.61	22.99	31.36	40.35	42.23

17.26.1 BIAL has not projected any costs toward disposal of waste and sewage.

17.27 **Concession Fees:** Concession Agreement was entered into between Ministry of Civil Aviation, Gol and BIAL on 5th July 2004. For grant of concession, exclusive right and privilege to carryout various activities as listed in Concession Agreement (Article-3), BIAL has to pay to Gol a fee amounting to 4% of Gross Revenue annually. The payment terms, Account, provisional payment, interest and taxes have been detailed in Article 3.3 of the Concession agreement.

17.28 As per the Concession Agreement of BIAL (Article 3.3.5), the concession fee for first 10 financial years from the date of airport opening date (AOD) shall be payable in twenty equal half

yearly instalments. The first such payment is due and payable in the 11th financial year from starting of the operations of airport (i.e., 24th May 2008).

17.29 Based on the above, the concession fee provision considered in the MYTP submitted for the first control period is detailed below:

**Table 69: Summary of concession fee cost submitted by BIAL – Single Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Concession Fee on Aviation charges – based on ARR computed	15.94	18.40	25.70	34.04	35.98
Concession Fee on Aero Concessions	3.77	3.42	3.54	3.64	3.71
Concession Fee on Non Aeronautical Revenues	5.67	5.79	6.69	7.56	8.04
Total Concession Fee	25.38	27.62	35.92	45.24	47.74

**Table 70: Summary of Concession Fee submitted by BIAL - Dual Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Concession Fee on Aviation charges – based on ARR computed	23.98	25.55	32.99	41.47	44.11
Concession Fee on Aero Concessions	3.77	3.42	3.54	3.64	3.71
Total Concession Fee	27.74	28.97	36.52	45.10	47.82

17.30 The concession fee @ 4% on gross revenue payable to GoI has been considered and provided as year-on-year expenditure. The increase in the concession fees is on account of projected increased gross revenue to BIAL

17.31 Lease Rent: The Land Lease Deed was executed between KSIIDC and Bangalore International Airport Limited (BIAL) on 30th April 2005, wherein KSIIDC leased / sub-leased to BIAL free from encumbrances and / or encroachments, of all that piece and parcel of land measuring 3884 acres and 25 guntas and further agreed to lease out 133 acres and 16 guntas together with all rights, liberties, privileges, benefits, rights of way, paths, passages pertinent to the site to hold, possess, use and enjoy the site and or any part thereof, in accordance with the provisions of the Deed. KSIIDC handed over the possession of 124 acres 6-guntas in the years 2006 & 2007 and subsequently an Additional Land Lease Deed dated 31st December 2011 has been executed and registered.

17.32 As per the Land Lease Deed the lease rent payable to KSIIDC is nominal lease rent of one

rupee per annum up to Airport Opening Date (AoD) and lease rent @ 3% on the land value of Rs. 211.7792 Crore on land parcel of 4008 acres and 6 guntas from AoD i.e., 24th May 2008 till the end of 7 years, @ 6% for the 8th year after AoD and for every year following 8th year, lease rent equivalent to preceding year lease rent plus @3% is payable.

17.33 Based on the above, lease rent considered in the MYTP submitted for the first control period is detailed below:

**Table 71: Summary of total lease rent submitted by BIAL – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Lease Rent	6.35	6.35	6.35	6.35	11.78

17.34 **Insurance Costs:** BIAL's current insurance plans comprises of three type of policies

- 17.34.1 Industrial all risks policy for the assets of the airport on a replacement cost basis.
- 17.34.2 AOL Policy for US\$ 500 Million
- 17.34.3 Business Interruption policy with a cover value of Rs.2168 Crores
- 17.34.4 Miscellaneous Insurance policies with a premium of Rs.8 Lacs

17.35 BIAL has considered a premium rate of 0.05% on (a) & (c) and 0.06% on b).

17.36 The workings for the insurance costs projected is given below:

**Table 72: Summary of Insurance cost submitted by BIAL**

Projected Insurance Costs		2011-12	2012-13	2013-14	2014-15	2015-16
Industrial All Risk Premium						
Asset Value at Historical Costs	Rs. Cr	2,044.48	2,240.33	3,846.14	3,995.26	4,078.15
WPI-Capex Index based escalation	%	2.70%	2.70%	2.70%	2.70%	2.70%
Asset Value at Replacement Costs	Rs. Cr	2,170.54	2,424.99	4,096.28	4,356.00	4,556.49
Insurance Premium Rate	%	0.05%	0.05%	0.05%	0.05%	0.05%
<b>Industrial All Risk Premium</b>	Rs. Cr	<b>1.09</b>	<b>1.21</b>	<b>2.05</b>	<b>2.18</b>	<b>2.28</b>
Airport Operators Liability						
Annual Cover Value	USD Million	500	500	500	500	500
INR-USD Exchange Rate	Rs.per USD	47.91	54.01	54.29	54.06	54.41
Annual Cover Value	Rs. Cr	2,395.47	2,700.44	2,714.52	2,703.01	2,720.73
Insurance Premium Rate	%	0.06%	0.06%	0.06%	0.06%	0.06%
<b>AOL Insurance Premium</b>		<b>1.44</b>	<b>1.62</b>	<b>1.63</b>	<b>1.62</b>	<b>1.63</b>
Business Interruption Risk						
Annual Cover Value	Rs. Cr	2,168.00	2,168.00	2,168.00	2,168.00	2,168.00
Insurance Premium Rate	%	0.05%	0.05%	0.05%	0.05%	0.05%



Projected Insurance Costs		2011-12	2012-13	2013-14	2014-15	2015-16
<b>Business Interruption Premium</b>	Rs. Cr	<b>1.08</b>	<b>1.08</b>	<b>1.08</b>	<b>1.08</b>	<b>1.08</b>
<b>Other EAR/D&amp;O/Laptop</b>	Rs. Cr.	<b>0.08</b>	<b>0.08</b>	<b>0.08</b>	<b>0.08</b>	<b>0.08</b>
<b>Total Insurance Premium</b>	<b>Rs. Cr</b>	<b>3.69</b>	<b>4.00</b>	<b>4.84</b>	<b>4.96</b>	<b>5.07</b>

17.37 **Marketing and Advertising costs:** Marketing costs proposed by BIAL includes Collection costs and Discounts as per the details given below:

**Table 73: Summary of Marketing and Advertising Costs proposed by BIAL – Single Till – Rs. Crores**

Projected Collection Costs	2011-12	2012-13	2013-14	2014-15	2015-16
Collection Costs	2.48	3.04	3.38	3.85	4.36
Sales and Marketing Expenses	2.09	2.34	2.53	2.74	2.96
Total	4.57	5.38	5.91	6.58	7.32

**Table 74: Summary of Total Marketing cost projected by BIAL - Dual Till – Rs. Crores**

Projected Collection Costs	2011-12	2012-13	2013-14	2014-15	2015-16
Collection Costs	2.48	3.04	3.38	3.85	4.36
Sales and Marketing Expenses	1.78	1.99	2.15	2.33	2.52
Total	4.25	5.03	5.53	6.17	6.88

17.38 **OMSA Fee:** BIAL has entered into an agreement with Unique, Zurich for the Operations, Maintenance and Service of the Airport. Services to be rendered by Unique as part of this agreement are specified as part of the agreement. Fee payable to Unique is classified as:

- 17.38.1 Fixed Fee – As per the agreed rates and schedule
- 17.38.2 Input Fee – As per the agreed rates
- 17.38.3 Performance Fee – To be computed in accordance with the performance milestones to be achieved by the company, based on which fee % has been defined. Agreement specifies that the Performance fee will, at any cost be capped at 2% of the EBIDTA.

17.39 BIAL has proposed the OMSA Fee in line with the agreement and has considered the following costs in its submission:

**Table 75: Summary of OMSA fee proposed by BIAL - Single Till – Rs. Crores**

Projected OMSA Fee	2011-12	2012-13	2013-14	2014-15	2015-16
Fixed Fee	2.03	3.29	3.11	3.18	3.31
Performance Fee	4.61	8.03	11.50	14.28	14.42
<b>TOTAL</b>	<b>6.64</b>	<b>11.33</b>	<b>14.61</b>	<b>17.46</b>	<b>17.73</b>

**Table 76: Summary of OMSA Cost proposed by BIAL under Dual Till – Rs. Crores**

Projected OMSA Fee	2011-12	2012-13	2013-14	2014-15	2015-16
Fixed Fee	2.03	3.29	3.11	3.18	3.31
Performance Fee	4.15	6.87	9.92	12.29	12.48
<b>TOTAL</b>	<b>6.18</b>	<b>10.17</b>	<b>13.02</b>	<b>15.47</b>	<b>15.79</b>

17.39.1 The Fixed Fee is proposed to increase from 2013-14 based on CPI index. Input fee is considered in absolute Euro Values as per the agreement and Out of Pocket expenses is considered at 15% of the Input Fee.

17.39.2 Performance fee has been at the maximum ceiling specified in the OMSA agreement – at 2%. BIAL, in its additional submission has stated that the actual Performance fee paid for the year 2011-12 has been around 1.29%.

17.40 **Waivers and Bad Debts:** BIAL has estimated Waivers and Bad Debts as a % of the Projected Revenues and included the same as part of Operating Expenses to compute the Aggregate Revenue Requirement as given below:

**Table 77: Summary of Waivers and Bad Debts claimed as part of the reimbursement by BIAL - Single Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Waivers and Bad Debts	1.22	27.97	9.11	10.56	12.08

**Table 78: Summary of waivers and bad debts claimed by BIAL as part of reimbursement - Dual Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Waivers and Bad Debts	1.57	30.22	11.72	13.65	15.72

17.41 General Administration Costs: General Administration costs include Consultancy & Legal Costs, Travel costs and other office costs proposed for the control period and actual costs incurred for the past period are as given below:

**Table 79: Summary of General Administration costs proposed by BIAL-Single Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Consultancy & Legal	11.20	14.30	15.73	17.30	19.03
Travel Costs	4.10	4.30	4.73	5.20	5.72
Office Costs	7.30	8.20	9.02	9.92	10.91
<b>TOTAL</b>	<b>22.60</b>	<b>26.80</b>	<b>29.48</b>	<b>32.43</b>	<b>35.67</b>

**Table 80: Summary of General Administration costs proposed by BIAL – Dual Till – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Consultancy & Legal	9.52	12.16	13.37	14.71	16.18
Travel Costs	3.49	3.66	4.02	4.42	4.86
Office Costs	6.21	6.97	7.67	8.43	9.28
TOTAL	19.21	22.78	25.06	27.56	30.32

17.42 The company has proposed estimated costs for 2011-12 and 2012-13 after which a costs for the future years have been projected considering a 10% increase year on year.

17.43 The actual costs incurred against the above heads, for the period 2011-12 is Rs. 20.47 Crores Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Operating Expenditure:

17.44 BIAL has additionally submitted as follows:

*31. Operations and Maintenance Expenditure*

*Authority's Approach: In clauses 11.1 to 11.17 of Order No.13 and clause 5.4 of Direction No.5, the Authority has proposed detailed guidelines with respect to operations and maintenance expenditure. The Authority proposes to undertake a prudency check with respect to underlying factors impacting variance over the last few years; and assess efficiency improvement. The Authority has also largely restricted the scope of uncontrollable costs. The Authority has proposed that, uncontrollable costs be restricted to, "other mandated operating costs" and "statutory operating costs". The Authority requires all other uncontrollable costs to be reflected by the airport operator with supporting evidence and forecasts as a part of the building blocks approach.*

*Observations: BIAL would like to bring to fore certain business realities with respect to operations and maintenance expenditure. Firstly, there are a large number of uncertainties with respect to day-to-day expenditure, which cannot be forecast by the airport operator. To illustrate, change in expenses due to fuel price hike, exchange rate fluctuations, are not only beyond the control of the airport operator, but also cannot be estimated/predicted in advance. Let alone the airport operator, even Governments world over cannot predict the rate of inflation accurately. In such a situation, to expect the airport operator to predict and forecast such macroeconomic changes and/or the impact of such macroeconomic changes on the operations and maintenance expenditure of the airport operator is not only unfair and onerous but a near impossibility.*

*Additionally, by not providing for exchange rate fluctuations, the enterprise and entrepreneurial ability of the airport operator in raising overseas debts is largely restricted. It is common knowledge that overseas borrowings tend to be at more competitive rates of interest, but are accompanied by risks relating to exchange rate fluctuations. The airport operator's freedom to make a reasoned commercial decision in this regard is greatly restricted because the Authority provides little or no compensation for exchange rate fluctuations. This approach is also unfair to the airport operator because, if no loss is incurred by the airport operator on account of exchange rate fluctuations, and the airport operator ends up with a profit, such profits will be ploughed back and thus, the airport operator receives no particular benefit or incentive for its efforts. Whereas, if the airport operator incurs a loss, the airport operator will be forced to bear the burden of such a loss. This is not only an unfair regime, but also restricts and impinges upon the airport operator's freedom of enterprise.*

*Expenses incurred towards operations and maintenance expenditure are clearly accounted for and audited. It is the audited accounts which are submitted to the Authority. Moreover, in the case of BIAL, state parties, i.e. Airports Authority of India and State of Karnataka have appointed nominee directors and the expenses incurred are therefore, approved by state parties. An entrepreneur requires flexibility and freedom of enterprise in order to conduct its business effectively. Having to post facto justify every such expense to the Authority would largely restrict this freedom of enterprise. Such continuous and intense regulatory scrutiny would completely compromise entrepreneurial freedom and increase the cost of regulation manifold.*

*Submissions: The Authority to consider reimbursing the audited operations and maintenance expenditure in full. The Authority can call for explanations / justifications only when expenses prima facie appear to be overly excessive. In summation, the Authority can consider requiring justifications, prudence check and review of efficiency enhancement measures only as an exception and not as a rule.*

*The Authority can set a benchmark, preferably in line with the interest rates offered by any nationalized bank in India. The airport operator needs to be allowed to keep the benefits or suffer losses, as the case may be, in case of any deviation from the benchmark. This approach would be fair to the users as well as the airport operator.*

### *32. Bad debts*

*Authority's Approach: In clause 11.7 and 17.5.8.f of Order No.13 and clause 5.4.3 of Direction No.5, the Authority has proposed that any allowance for working capital should be net of allocation for bad debts.*

*Observations: Bad debts are a business reality. No business can function without facing bad debts. The Authority has not proposed any mechanism for reimbursement of bad debts to the airport operator. Effectively, the airport operator will be forced to pay out of the ARR towards bad debts. This is extremely unfair on the airport operator because certain bad debts are completely beyond the control of the airport operator. To illustrate, there are significant outstandings from Kingfisher Airlines Limited and Air India Limited. Under the proposed regulations, for no fault of BIAL, BIAL would be forced to bear the burden of this bad debt.*

*Submissions: The Authority should make provisions to reimburse bad debts to the airport operator. If and when a bad debt is recovered, the provision for bad debts can be reversed. The provisions in relation to bad debts should not be applicable to services other than regulated services.*

## **(b) Authority's examination of BIAL's submission on Operating and Maintenance**

### **Expenditure**

17.45 Direction No. 5 states that the

*"Operation and Maintenance Expenditure shall include all expenditure incurred by the Airport Operator(s) including expenditure incurred on statutory operating costs and other mandated operating costs ....."*

*The assessment of operation and maintenance expenditure by the Authority shall include a review of the forecast of such expenditure as submitted by the Airport Operator based on the following principles: (a) Assessment of baseline operation and maintenance expenditure based on review of actual expenditure indicated in last audited accounts, and prudence check inter alia with respect to underlying factors impacting variance over the preceding year(s) including treatment for one-time costs or atypical costs. For avoidance of doubt, the operation and maintenance expenditure to be assessed will be limited to only those expenditure that relate to assets and services taken into consideration for determination of Aggregate Revenue Requirement"*

17.46 **Requirement for truing up:** The Authority has carefully considered the submission made by BIAL on truing up of Operating Expenditure in Para 17.44 above. The Authority proposes to consider truing up of Operating Expenditure (except the following – Bad Debt, Foreign Exchange Fluctuations where palpable efforts have to be taken to recover bad debts and manage the foreign exchange costs), as proposed by BIAL.

17.47 The Authority is conscious of the fact that the issue of only efficient operating and maintenance costs is salient in a price cap determination. However, this being the first control

period and the Price Cap regime is in the evolution stage, there may not be ready comparisons available to benchmark the costs. Also, costs estimated by BIAL (especially in case of Personnel, Operations and Maintenance, Insurance etc.) for the first control period are also dependent on the asset costs finally being incurred and capitalized.

17.48 These are subject to the requirements of the Clause 8.9.1 Concession Agreement as reproduced below and if necessary requiring commissioning a study for the same.

*“BIAL shall, in accordance with Good Industry Practice and Applicable Law and as contemplated by the terms of this agreement:*

*8.9.1 Manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking”*

17.49 The Authority notes however that it means that the risk associated with Operations and Maintenance expenditure is also completely eliminated and should therefore appropriately reflect in the Fair Rate of Return on Equity.

Authority’s examination on other individual items of the Operating Costs reviewed by the Authority are given below

17.50 **Bad Debts:** The Authority has carefully reviewed BIAL’s submission on Bad Debts. With respect to Bad debts, the Authority, in providing responses to stakeholder comments in Order 13, stated:

*“Bad debts should be considered for effecting error correction”,*  
has already stated that

*“The Authority believes that Bad Debts in case of Airport Operators would pertain to inefficiencies in collection/ follow-up for payments from Institutional users like airlines ..... Accordingly, the Authority is not persuaded to accept the submission in this regard.”*

17.51 In Authority’s view managing the risk of Bad Debts is within the Business Activity to be undertaken by the Airport Operator and palpable efforts are required to be taken to minimize and recover these. Hence, the Authority does not propose to allow for any Bad Debts based on any estimates made by BIAL.

17.52 However, the Authority also notes that BIAL, in its financial statements of 2012-13 carries a charge on account of Bad Debts actually written off to the tune of Rs. 47.51 crores, which is on account of what can be called one-off event viz. dues from Kingfisher becoming unrecoverable. While the Authority proposes to not consider the Bad debts on an estimate basis, the Authority proposes to consider Bad Debts actually written off, as part of Operating expenses to be considered as part of ARR. The Authority invites comments from stake holders on the consideration of

allowance for Bad Debts.

17.53 **Personnel Costs:** As per the audited certificate provided by BIAL, as on 2011-12 the total head count is 791 and the total staff cost is Rs. 72.86 Crores (2010-11: Rs.65.65 Crores). The headcount in 2011-12 includes about 66 staff of the project team whose salary of Rs.10 Crores has been capitalized. As against this BIAL has projected a head count 734 during 2011-12 and 835 during 2012-13 and has thereafter projected the head count to increase by 10% for next three years in the control period for an average annual increase of 1.4 Million passengers during the control period. In addition, BIAL has projected additional head count of 49 in the year 2014-15 on account of expansion of Terminal 1. As per current plans, Terminal 1 Expansion, is expected to be completed by 2013-14. Accordingly, the head count is planned to increase only in 2014-15.

17.54 BIAL has estimated the staff cost considering the existing salary levels of employees in different grades on Cost-to-Company basis. It has projected an annual increase of 10% on existing levels on a year on year basis during the control period. In addition, BIAL has also considered the following additional costs:

17.54.1 Staff Variable pay and Incentives @ 24% of the Salary cost. The Authority notes that the trend of actual variable pay as part of the Fixed Cost, based on additional data submitted by BIAL is around 22% to 23% in the past 2 years, whereas the same has been considered at 24% in the proposal

17.54.2 Staff welfare, transportation, training and other costs @ 11% of Salary costs for 2011-12, 2012-13 and 17% of salary cost for the rest of the control period. Staff welfare and other costs are proposed to be retained at the 11% rates as specified for 2011-12 and 2012-13 by the Authority for its computations.

17.55 Estimated increase in cost in 2014-15 and 2015-16 is due to additional capacities proposed to be added due to Terminal expansion, which is made as an estimated projection which cannot be currently validated.

17.56 Also the Authority notes that the trend of actual staff welfare and other costs incurred is around 8% as can be seen from the additional submission made by BIAL whereas the same has been considered at 11% for 2011-12 and 2012-13 and increasing to 17% for the balance period in the control period.

17.57 BIAL has considered proposed cost on Personnel for 2011-12 and 2012-13 at higher than the cost actually incurred as seen from the audited Financial Statements, which needs to be corrected.

17.58 Based on the changed highlighted above, the reworked Personnel costs, proposed to be considered are as given below for the period

**Table 81: Revised Personnel cost proposed to be considered by Authority**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Head count	735	836	922	1017	1121
Cost Rs. Crores	74.68	86.33	112.12	138.52	167.05

17.59 The Authority notes that the actual headcount and costs projected may undergo a change in view of the changes in cost of hiring new employees, actual headcount increase that happen during the control period. Hence these costs need to be trued up at the end of the next control period.

17.60 **Operation expenditure:** BIAL has considered proposed cost on Operation and Maintenance for Phase 2 at higher than the rates of O&M expenditure proposed by BIAL. The past trend of costs incurred do not justify a higher % of operation cost being attributed to Phase 2 assets, especially in the initial years after capitalization when the wear and tear is expected to be at the lowest. Also the warranty costs proposed depend on the actual value of capital expenditure incurred and the actual date of commissioning of the assets.

17.61 Also, the costs proposed for 2011-12 and 2012-13 are different from the actual costs incurred, which is proposed to be corrected to be in line with the actual O&M costs

17.62 In view of the same, the Authority proposes to:

17.62.1 True up the projections for 2011-12 and 2012-13 based on the actual results

17.62.2 Consider the same % of O&M expenditure for assets capitalized in Phase 2 as in Phase 1

17.63 Accordingly the re-computed O&M expenditure proposed to be considered is as given below:

**Table 82: Recomputed O&M Expenditure proposed to be considered by the Authority - Single Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
O&M Cost – Infra	22.13	24.34	26.78	50.90	55.99
O&M Cost – ICT	11.12	12.23	13.46	18.08	19.89
Parking Operator Fee / Trolley Management Charges	3.92	4.21	4.77	5.49	6.29
Other O&M Cost	1.49	8.63	2.25	2.48	2.72
<b>TOTAL</b>	<b>38.67</b>	<b>49.42</b>	<b>47.25</b>	<b>76.95</b>	<b>84.89</b>

**Table 83: Recomputed O&M Costs considered by Authority - Dual Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
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	2011-12	2012-13	2013-14	2014-15	2015-16
O&M Cost – Infra	14.32	15.75	17.33	35.94	39.54
O&M Cost – ICT	8.90	9.79	10.76	14.53	15.99
Parking Operator Fee / Trolley Management Charges and other O&M Cost	4.60	10.92	5.97	6.77	7.66
<b>TOTAL</b>	<b>27.82</b>	<b>36.45</b>	<b>34.06</b>	<b>57.24</b>	<b>63.18</b>

17.64 The Authority notes that the actual O&M cost incurred may be different due to changes in the value and date of capitalization of assets. Hence while this cost is proposed to be allowed, this needs to be trued up based on actual results.

17.65 **Concession Fee:** The Authority notes that Concession fee payable is directly dependent on the revenues earned / proposed to be earned during a year which is dependent on the various building blocks defining the Aggregate Revenue Requirement and any changes in other building blocks impacts the computation of Concession Fee payable. Hence concession fee computed based on projected revenues may vary from actual concession fee paid during the period.

17.66 Hence the concession fee is proposed to be trued up based on the actual concession fee to be incurred during the control period, at the beginning of the next control period.

17.67 The recomputed concession fee, based on other changes to the Building Blocks, as detailed in the respective sections, is as given below:

**Table 84: Recomputed Concession fee, as determined by the Authority - Single Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Concession Fee on Aviation charges – Based on ARR computed	13.81	15.94	22.00	29.16	30.45
Concession Fee on Aero Concessions	1.39	1.33	1.26	1.30	1.31
Concession Fee on Non Aeronautical Revenues	5.73	6.48	6.30	7.59	8.53
<b>Total Concession Fee</b>	<b>20.94</b>	<b>23.75</b>	<b>29.56</b>	<b>38.05</b>	<b>40.29</b>

**Table 85: Recomputed Concession Fee proposed to be considered by Authority under Dual Till – Rs. Crores**

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Concession Fee on Aviation charges – Based on ARR	17.54	19.80	24.57	31.46	33.24

Particulars	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
computed					
Concession Fee on Aero Concessions	-	-	-	-	-
Total Concession Fee	17.54	19.80	24.57	31.46	33.24

**17.67.1** The Authority notes that this amount will further change, based on any changes to other Building Blocks in actual scenario that may get trued up, hence this cost which is a result of those changes also have to be trued up at actuals, which is proposed to be done at the end of the control period.

**17.67.2 Insurance Cost:** Authority notes that while the Insurance premium is projected based on the proposed asset values, the actual insurance cost incurred may be different due to changes in the value and date of capitalization of assets. Hence while this cost is proposed to be allowed, this needs to be trued up based on actual results.

**17.67.3 OMSA Fees:** The Authority notes that the actual trend of Performance fee in the previous year as submitted by BIAL was 1.29%. Hence the Authority proposes to cap the Performance fee at 1.29% in line with the earlier trend.

**17.67.4** The Authority notes that OMSA performance fee payable is directly dependent on the revenues earned / proposed to be earned during a year which is dependent on the various building blocks defining the Aggregate Revenue Requirement and any changes in other building blocks impacts the computation of Concession Fee payable. Hence OMSA fee computed based on projected revenues may vary from actual OMSA fee paid during the period.

**17.67.5** The recomputed OMSA fee projections, based on the above and the changes to the Building Blocks, as detailed in the respective sections, is as given below:

**Table 86: Recomputed OMSA Fee - Single Till – Rs. Crores**

Projected OMSA Fee	2011-12	2012-13	2013-14	2014-15	2015-16
Fixed Fee	2.03	3.29	3.11	3.18	3.31
Performance Fee	3.78	4.04	5.95	7.47	7.50
<b>TOTAL</b>	<b>5.81</b>	<b>7.34</b>	<b>9.06</b>	<b>10.66</b>	<b>10.81</b>

**Table 87: Recomputed OMSA Fee - Dual Till – Rs. Crores**

Projected OMSA Fee	2011-12	2012-13	2013-14	2014-15	2015-16
Fixed Fee	2.03	3.29	3.11	3.18	3.31
Performance Fee	2.56	2.64	4.18	5.30	5.21
<b>TOTAL</b>	<b>4.59</b>	<b>5.94</b>	<b>7.29</b>	<b>8.48</b>	<b>8.52</b>

17.68 To summarise the above, the revised Operating Expenditure proposed to be considered by the Authority for the purpose of MYTP are as given below:

**Table 88: Recomputed Operating and Maintenance Expenditure - Single Till- Rs. Crore**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	74.68	86.33	112.12	138.52	167.05
Operation & Maintenance	38.79	50.20	47.25	76.95	84.89
Concession Fee	20.94	23.75	29.56	38.05	40.29
Lease Rent	6.35	6.35	6.35	6.35	11.78
Utilities	21.90	22.85	29.84	40.35	42.23
Insurance	2.85	2.50	4.89	4.98	5.09
Marketing and Advertising	5.67	4.86	6.01	6.71	7.48
Waivers and Bad Debts		47.51			
OMSA Fee	5.81	7.34	9.06	10.66	10.81
General Administration costs					
Consultancy and Legal	11.15	10.71	15.73	17.30	19.03
Travel Costs	4.10	4.30	4.73	5.20	5.72
Office Costs	7.30	8.20	9.02	9.92	10.91
<b>Total Costs</b>	<b>199.53</b>	<b>274.90</b>	<b>274.55</b>	<b>355.00</b>	<b>405.29</b>

**Table 89: Recomputed Operating and Maintenance Cost proposed to be considered - Dual Till – Rs. Crore**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	59.89	69.23	89.91	111.08	133.96
Operation & Maintenance	27.82	36.45	34.06	57.24	63.18
Concession Fee	17.54	19.80	24.57	31.46	33.24
Lease Rent	4.88	4.88	4.88	4.88	9.05
Utilities	16.21	17.24	22.38	30.26	31.67
Insurance	2.74	2.91	3.66	3.74	3.81
Marketing and Advertising	4.25	5.12	5.63	6.29	7.03
Waivers and Bad Debts		47.51			
OMSA Fee	4.59	5.94	7.29	8.48	8.52
General Administration costs					
Consultancy and Legal	9.48	9.14	13.37	14.71	16.18
Travel Costs	3.49	3.66	4.02	4.42	4.86
Office Costs	6.21	6.97	7.67	8.43	9.28
<b>Total Costs</b>	<b>157.09</b>	<b>228.85</b>	<b>217.43</b>	<b>281.00</b>	<b>320.78</b>

17.69 The Authority also notes that BIAL has currently given space for construction of Hotel to a consortium of EIH Limited and L&T and this contract is under Arbitration. Costs that may be incurred towards negotiating and handling this contract, along with cost of arbitration, legal fee etc. which are part of Non-Airport Activity may be included in the Operating and Maintenance expenditure. The

Authority has requested for details of these costs incurred from BIAL, which the Authority proposes to consider appropriately and reduce from the Operating Expenditure at the time of final Order, or in the alternative at the time of next control period.

**Proposal No 12. Regarding Operating and Maintenance Expenditure**

**12.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To consider the revised Operating and Maintenance Expenditure as proposed by Authority detailed in Table 88 and Table 89, for the purpose of determination of Aeronautical Tariffs under Single Till and Dual Till respectively.**
- ii. To consider including Rs. 47.51 crores of actual Bad debts write offs during 2012-13 as part of the Operating and Maintenance Expenditure.**
- iii. To accept the proposal of BIAL to true up this O&M Expenditure based on the actual costs incurred by BIAL during the control period, at the beginning of the next control period.**
- iv. To seek information from BIAL on Operating expenditure incurred on Non-Airport Activity included in their actual expenditure for 2011-12 and 2012-13 and the projections and to adjust the same at the time of the Order or if these details are unavailable by that time, at the time of tariff determination for the next control period.**

## 18 Revenue from Other than Aeronautical Services

### (a) BIAL's submission on Revenue from other than Aeronautical Services

18.1 BIAL has submitted category wise details on Revenues from Aeronautical Services. BIAL, in its submission has divided the Non-Aeronautical Services Revenue into 2 categories as Aviation Concessions and Non-Aeronautical Revenue

18.2 Revenues from Aerobridge, Cargo, Fuel Farm and Flight Catering have been classified as Aviation Concessions whereas other revenues such as Landside traffic, Revenue from Retail and F&B, Advertising and Promotions, Rentals, Utility Charges, Common Infrastructure Charges, Revenue from Information Communication Technology (ICT), have been categorised as Non-Aeronautical Revenue.

18.3 BIAL has in its submission stated that:

*"The revenue from services other than the aeronautical services viz., from Non-aeronautical Revenue (NAR) was focused and treated as standalone services right from the inception. The initial business plan and financial model has been prepared with the premise that Aeronautical Revenue and Non Aero Revenues being treated distinctly. Also, Government of Karnataka (GoK) has provided financial support of Rs.335 Cr as viability gap funding loan to improve the viability of the project and enhance the bankability of the initial phase by entering into State Support Agreement (SSA) only based on the above criteria. BIAL was the first PPP airport and is a pioneer in developing, maintaining and running the airport operations which primarily aims at focusing on its core competence viz., airport operations. This being the fact, BIAL has concessioned the aviation concessions and NAR activities to the experts / market leaders.*

*BIAL has selected professional partners / concessionaires based on international bidding process who will provide various services such as Cargo Facility, Ground Handling, Aviation Fuel, Flight Catering, Retail, Food & Beverages, Advertising and so on. The process mainly ensured competitive price structures and defined the adequate quality standards to be complied with, at minimum. Also, it was ensured that a minimum of 2 concessionaires operate in every business so as to safeguard adequate competition and better service to end users.*

*BIAL has entered into Service Provider Right Holder Agreement (SPRH) with service providers wherein BIAL is entitled for agreed percentage of Revenue share on gross turnover or Minimum Annual Guarantee (MAG) whichever is higher.*

*As per Article 10 of the Concession Agreement (CA) read with Schedule-6, Regulated Charges i.e., Landing, Parking, Housing, PSF and UDF are only to be regulated. Further, as per Article 10.3 of CA, BIAL is free without any restriction to determine the charges to*

*be imposed in respect of the facilities and services provided at the Airport or on the site, other than the facilities and services in respect of which Regulated Charges are levied. Based on the above, the revenue from various services other than Regulated Services has been considered as NAR.”*

18.4 BIAL has also stated that the Projections of Non-Aeronautical Revenues are based on the business plan projections submitted by Concessionaires as per agreement entered into with BIAL.

18.5 The Authority notes that BIAL has engaged other Concessionaires to carry out the activities of:

- 18.5.1 Ground Handling Services
- 18.5.2 Cargo facility
- 18.5.3 Supplying fuel to the aircraft

and has proposed to consider the same as Non-Aeronautical Revenues and has included the same accordingly in the submission.

18.6 Summary of Non-Aeronautical Revenues for the first control period, as submitted by BIAL is detailed below:

**Table 90: Summary of Non-Aeronautical Revenues proposed by BIAL – Rs. Crores**

Particulars	11-12	12-13	13-14	14-15	15-16
Aerobridge Charges	8.89	8.00	8.72	9.75	10.82
Cargo	28.43	27.63	28.85	29.46	29.57
Fuel Farm	51.65	44.27	44.71	45.15	45.60
Flight Catering	5.22	5.65	6.11	6.61	6.70
Ground Handling	-	-	-	-	-
Sub-Total – 1	94.19	85.54	88.39	90.97	92.70
Landside Traffic	22.63	27.35	28.55	30.31	32.14
Terminal Entry	-	-	-	-	-
Retail	28.69	29.50	32.70	36.83	41.31
Food & Beverage	13.55	13.77	15.03	16.80	18.72
Advertising and Promotion	33.62	29.70	32.72	36.81	37.00
Rent and Land Lease	25.91	26.31	22.03	29.92	29.92
Utility Charges	5.63	5.61	5.63	5.63	5.64
ICT	11.83	12.60	12.60	12.69	14.09
Common Infrastructure Charges	-	-	18.00	20.06	22.29
Sub Total - 2	141.86	144.83	167.27	189.06	201.12
Total	236.05	230.37	255.65	280.03	293.82

18.7 Drivers to each stream of Revenue as submitted by BIAL is as given below.

**Table 91: Drivers to the revenue streams as indicated by BIAL**

Sl. No.	Revenue stream	Primary Drivers
1	Aerobridge charges	ATM
2	Cargo facility	Cargo Tonnage
3	Fuel Farm	ATM
4	Flight Catering	MAG
1	Landside Traffic	Passengers
2	Retail / duty free	Passengers
3	Food & Beverages	Passengers
4	Advertisement & Promotions	MAG
5	Rents & Land leases	Space
6	Information, Communication & Technology	ATM
7	Common Infrastructure Charges	Passengers
8	Utility charges	Consumption

18.8 Details on each head of Non-Aero Revenue as submitted by BIAL and analysis of the same is as follows:

18.9 **Aero Bridge Charges:** Aerobridge charges have been computed as below:

**Table 92: Summary of Aerobridge charges computed by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
# of Aircrafts using Aerobridge – Narrow body	18,426	16,499	17,983	20,099	22,309
# of Aircrafts using Aerobridge – Wide body	3,731	3,500	3,815	4,263	4,732
Charges for Narrow body					
Rate per Aircraft per hour	2,300	2,300	2,300	2,300	2,300
Rate per additional hour	2,300	2,300	2,300	2,300	2,300
Estimated billing amount - Rs. Crore	4.94	4.30	4.69	5.24	5.82
Charges for Wide Body					
Rate per Aircraft per hour	10,500	10,500	10,500	10,500	10,500
Rate per additional hour	4,500	4,500	4,500	4,500	4,500
Billing amount Rs. Crores	3.95	3.70	4.03	4.51	5.00
Total charges Rs. Crores	8.89	8.00	8.72	9.75	10.82

18.10 **Cargo Charges:** BIAL has stated that:

“AERA has determined the tariff for aviation concessionaires’ viz., Cargo facility, Fuel Farm, Into plane services and Ground handling facilities operating at BIAL and have issued Order No.19,20,21,22& 23 of 2011-12. BIAL has considered in the MYTP, the revenue projections submitted by these concessionaires to AERA and subsequently approved by AERA.

18.11 Cargo charges have been computed in the business plan as below:

**Table 93: Summary of Cargo charges computed by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Cargo (Tons)	2,24,994	2,63,170	2,90,392	2,99,989	2,91,328
Share of Express cargo – not considered	11.19%	11.00%	11.00%	11.00%	11.00%
Revenue share per ton assumed	1,423.00	1,179.68	1,116.21	1,103.35	1,140.63
Revenue share computed Rs. Crores	28.43	27.63	28.85	29.46	29.57
Minimum Guarantee Rs. Crores	15.82	16.95	18.64	20.24	19.83
Revenue to BIAL – Higher of the 2 above – Rs. Crores	28.43	27.63	28.85	29.46	29.57

18.12 **Fuel Farm charges:** BIAL has stated that:

“AERA has determined the tariff for aviation concessionaires’ viz., Cargo facility, Fuel Farm, Into plane services and Ground handling facilities operating at BIAL and have issued Order No.19,20,21,22& 23 of 2011-12. BIAL has considered in the MYTP, the revenue projections submitted by these concessionaires to AERA and subsequently approved by AERA.

18.12.1 Computation of the Fuel Farm Charges as per the Business Plan is as detailed below:

**Table 94: Computation of Fuel Farm charges as submitted by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Fuel Through put charges					
Total Air Traffic Movements	1,19,195	1,04,646	1,14,415	1,27,874	1,41,939
Fuel required per ATM- Kilo litres	4.01	3.92	3.62	3.27	2.97
Revenue share per kilo litre Rs.	1,067.00	1,067.00	1,067.00	1,067.00	1,067.00
Revenue from Fuel Thru put Rs. Crores	51.03	43.71	44.15	44.59	45.04
Into Plane Fuel charges					
Fuel required per ATM- Kilo litres	4.01	3.92	3.62	3.27	2.97



<b>Particulars</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Total Air Traffic Movements	1,19,195	1,04,646	1,14,415	1,27,874	1,41,939
Revenue share to BIAL Rs. Per KL	10.50	10.50	10.50	10.50	10.50
Fuel Into Plane Revenue Rs. Crores	0.50	0.43	0.43	0.44	0.44
Pipeline ROW Charges Rs. Crores	0.12	0.12	0.12	0.12	0.12
Total Fuel Revenue	51.65	44.27	44.71	45.15	45.60

18.13 **Flight Catering Charges:** BIAL has outsourced the in-flight catering to Concessionaires and has submitted that as per the terms of their agreement, a per pax revenue is to be paid to BIAL subject to a minimum guarantee as specified in the agreement. In its business plan and the MYTP submission BIAL has stated that it has considered the Minimum guarantee payable by the concessionaires as revenue as the same is higher than the projected revenues. Details are as given below:

**Table 95: Details of Flight Catering charges proposed by BIAL**

<b>Particulars</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Departing Pax – Million	6.31	5.72	6.24	6.97	7.76
Meal per depax estimated	0.47	0.44	0.41	0.39	0.38
Revenue share per meal – Rs.	9.00	9.63	10.30	11.03	11.80
<b>Revenue Share – Rs. Crores</b>	2.69	2.41	2.63	3.00	3.48
<b>Minimum Assured Guarantee – Rs. Crores</b>	5.22	5.65	6.11	6.61	6.70
<b>Amount considered – Higher of the two</b>	5.22	5.65	6.11	6.61	6.70

18.14 **Landside Traffic:** BIAL has proposed 3 categories of Revenues under Landside traffic namely:

- 18.14.1 Parking
- 18.14.2 Taxi
- 18.14.3 Limousine

18.15 Revenue projections under each category are based on the estimate of Revenue per Depax which has been considered by BIAL as follows:

18.16 BIAL has considered 75% of the growth in estimated Departure Pax (which is 50% of the Total Pax for 2011-12 and 49.25% for the other years) as the applicable Pax on which the revenue is to be computed, as follows:

18.17 Accordingly revenue has been computed as below:

**Table 96: Summary of Landside traffic Revenue considered by BIAL**

<b>Particulars</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Revenue per Depax					

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Parking	19.30	21.95	21.95	21.95	21.95
Taxi	13.47	18.07	18.07	18.07	18.07
Limousine	6.18	6.83	6.83	6.83	6.83
Estimated Depax base					
Total Pax- Mn.	12.71	11.57	12.62	14.11	15.71
% as Depax	50%	49%	49%	49%	49%
Depax base for revenue – Mn.	5.81	5.34	5.70	6.21	6.73
Total of the rate per depax	38.95	46.85	46.85	46.85	46.85
Revenue Rs. Crores	22.63	27.35	28.55	30.31	32.14

18.18 **Retail Revenue:** BIAL has estimated revenues from its Retail business under 4 segments as Retail – Domestic, Retail – International, Retail – Forex, Retail – Others

**Table 97: Summary of Retail revenues computed by BIAL – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Retail - Domestic	5.07	4.47	4.85	5.41	6.01
Retail – International	18.66	20.11	22.38	25.26	28.38
Revenue Forex	4.33	4.55	5.07	5.72	6.43
Revenue Others	0.63	0.36	0.39	0.44	0.49
<b>TOTAL</b>	<b>28.69</b>	<b>29.50</b>	<b>32.70</b>	<b>36.83</b>	<b>41.31</b>

18.19 Computation of revenue under each of the category is as given below:

**Table 98: Detailed computation of Retail revenue – Domestic**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Domestic Depax – Mn.	5.17	4.48	4.87	5.42	6.02
Revenue share – Rs. Per Depax	9.82	9.97	9.97	9.97	9.97
<b>Revenue Retail Domestic – Rs. Crores</b>	<b>5.07</b>	<b>4.47</b>	<b>4.85</b>	<b>5.41</b>	<b>6.01</b>

**Table 99: Detailed computation of Retail revenue – International**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
International Depax – Mn.	1.14	1.23	1.37	1.55	1.74
Revenue share – Rs. Per Depax	163.37	163.37	163.37	163.37	163.37
<b>Revenue Retail International – Rs. Crores</b>	<b>18.66</b>	<b>20.11</b>	<b>22.38</b>	<b>25.32</b>	<b>28.43</b>

**Table 100: Computation of Forex Revenues as made by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
International Pax – Mn.	2.38	2.47	2.74	3.10	3.48
Revenue share – Rs. Per Pax	18.18	18.47	18.47	18.47	18.47
<b>Revenue Forex – Rs. Crores</b>	<b>4.33</b>	<b>4.55</b>	<b>5.07</b>	<b>5.72</b>	<b>6.43</b>

**Table 101: Other retail revenues proposed by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Depax – Mn.	6.31	5.72	6.24	6.97	7.76
Revenue share – Rs. Per Pax	1.00	0.63	0.63	0.63	0.63
<b>Revenue Others – Rs. Crores</b>	<b>0.63</b>	<b>0.36</b>	<b>0.39</b>	<b>0.44</b>	<b>0.49</b>

18.20 **Advertisement and Promotion:** BIAL has estimated the Advertisement and Promotion expenses as given below:

**Table 102: Summary of A&P earnings proposed by BIAL – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
A&P Revenue share	33.62	29.70	32.72	36.81	37.00

18.21 **Rent and Land Lease:** BIAL has estimated the rent and land lease charges payable based on the space availability during the different years. Details of the Rent and Land Lease charges estimated by BIAL is as follows:

**Table 103: Summary of Lease rentals proposed to be collected by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Airside/ Landside land available – Sq. m	17,043.30	17,043.30	17,043.30	17,043.30	17,043.30
Rental rate per sq. m	6,791.00	6,791.00	6,791.00	6,791.00	6,791.00
Airside Rental Rs. Crore	11.57	11.57	11.57	11.57	11.57
PTB Office area – Sq. m	1,224.00	1,224.00	1,224.00	1,599.00	1,599.00
Rental rate per sq. m	26,726.67	28,063.00	28,063.00	28,063.00	28,063.00
PTB Office Rental Rs. Crore	3.27	3.43	3.43	4.49	4.49
PTB Storage area – sq. m	1,920.60	1,920.60	1,920.60	2,295.60	2,295.60
Rental rate per sq. m	7,334.00	7,334.00	7,334.00	7,334.00	7,334.00
PTB Storage Rental Rs. Crore	1.41	1.41	1.41	1.68	1.68
PTB lounge area – sq. m	598.50	598.50	598.50	2,151.00	2,151.00
Rental rate per sq. m	42,233.00	42,233.00	42,233.00	42,233.00	42,233.00
PTB Lounge Rental Rs. Crore	2.53	2.53	2.53	9.08	9.08
Rent from Hotel	3.10	3.10	-	-	-
Rent from Cargo Village	1.17	1.17	-	-	-
Land Lease – Leased area – sq. m.	12,565.08	12,565.08	12,565.08	12,565.08	12,565.08
Annual Rental – Rs.	2,276.85	2,459.00	2,459.00	2,459.00	2,459.00
Revenue –Land Lease	2.86	3.09	3.09	3.09	3.09
<b>Total Rentals</b>	<b>25.91</b>	<b>26.31</b>	<b>22.03</b>	<b>29.92</b>	<b>29.92</b>

*Additional space projected for PTB Office, Storage and Lounge based on the Terminal 1 expansion proposed to be capitalised in 2013-14*

18.21.1 **Food & Beverage Revenues:** Food & Beverages Revenue has been classified by BIAL as Revenue from F&B – Domestic, Revenue from F&B – International, Revenue from F&B – Others.

**Table 104: Summary of F&B Revenue proposed by BIAL – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
F&B Domestic	6.18	5.66	6.14	6.85	7.61
F&B International	2.14	2.15	2.39	2.70	3.03
F&B Others	5.23	5.96	6.50	7.26	8.09
<b>TOTAL</b>	<b>13.55</b>	<b>13.77</b>	<b>15.03</b>	<b>16.80</b>	<b>18.72</b>

18.22 Computation of revenue under each of the category is as given below:

18.22.1 F&B – Domestic

**Table 105: Details of F&B Domestic provided by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Domestic Depax – Mn.	5.17	4.48	4.87	5.42	6.02
Revenue share – Rs. Per Depax	11.97	12.63	12.63	12.63	12.63
<b>Revenue F&amp;B Domestic – Rs. Crores</b>	<b>6.18</b>	<b>5.66</b>	<b>6.14</b>	<b>6.85</b>	<b>7.61</b>

18.22.2 F&B – International

**Table 106: Details of F&B International revenues provided by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
International Depax – Mn.	1.14	1.23	1.37	1.55	1.74
Revenue share – Rs. Per Depax	18.75	17.44	17.44	17.44	17.44
<b>Revenue F&amp;B International – Rs. Crores</b>	<b>2.14</b>	<b>2.15</b>	<b>2.39</b>	<b>2.70</b>	<b>3.03</b>

**Table 107: Details of Other F&B Revenue proposed by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Depax – Mn.	6.31	5.72	6.24	6.97	7.76
Revenue share – Rs. Per Pax	8.29	10.42	10.42	10.42	10.42
<b>Revenue Others – Rs. Crores</b>	<b>5.23</b>	<b>5.96</b>	<b>6.51</b>	<b>7.26</b>	<b>8.09</b>

18.23 **Utilities:** BIAL has estimated the supplementary charges collectable for use of Utilities as follows:

**Table 108: Summary of utility cost recovery proposed by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Electricity Contracted demand – kVA	8,934	8,934	8,934	8,934	8,934
Charges – Rs. Per kVA per month	430.44	430.44	430.44	430.44	430.44
Supplementary charges Electricity – Rs. Crores	4.69	4.68	4.68	4.68	4.69
Potable Water contracted demand – KL per day	700	700	700	700	700
Charges – Rs. Per KL per day	25.50	25.50	25.50	25.50	25.50
Supplementary charges – Potable Water – Rs. Crores	0.65	0.65	0.65	0.65	0.65

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Supplementary charges – Waste- Rs. Crores	0.28	0.28	0.30	0.30	0.30
Total Utilities recovery – Rs. Crore	<b>5.63</b>	<b>5.61</b>	<b>5.63</b>	<b>5.63</b>	<b>5.64</b>

18.24 **ICT Charges:** BIAL has estimated the ICT (Information Communication Technology) Charges to be collected based on the number of Air Traffic Movements projected (ATM) as given below:

**Table 109: Summary of ICT Charges proposed by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total ATMs	1,19,195	1,04,646	1,14,415	1,27,874	1,41,939
ICT Revenue per ATM	993	993	993	993	993
Total ICT Revenue Rs. Crores	11.83	10.39	11.36	12.69	14.09
Minimum amount		12.60	12.60	12.69	14.09
Higher of the two	11.83	12.60	12.60	12.69	14.09

18.25 **Common Infrastructure Charges:** BIAL, in its Business plan has proposed to levy a Common Infrastructure Charge per domestic departing passenger from 2013-14 as given below

**Table 110: Summary of Common Infrastructure Charges proposed by BIAL**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Domestic Depax – Mn.	5.17	4.48	4.87	5.42	6.02
Rate per Depax Rs.	-	-	37.00	37.00	37.00
Revenue Rs. Crores	-	-	18.00	20.06	22.29

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Revenue from Services other than regulated services:

18.26 BIAL has submitted as follows:

*18. Services other than Regulated Services / Revenues from Services other than Aeronautical Services*

*Authority's Approach: The Authority has proposed to apply the Single Till regulation mechanism to regulate all major airports. BIAL's comments with respect to the Single Till mechanism have been set out in the preceding paragraphs. As stated above, it is BIAL's submission that the Single Till mechanism is statutorily ruled out and is further inapplicable to BIAL. In this section, BIAL is submitting its comments in relation to the manner in which the Single Till mechanism is sought to be implemented by the Authority. As a part of the tariff determination process, in relation to services other than regulated services, the Authority has, among other things, proposed to:*

- *require the airport operator to forecast expenditure;*
- *undertake scrutiny of bottom-up projections of revenue made by the airport operator;*
- *undertake benchmarking of revenue levels;*
- *commission experts to ascertain whether opportunities for such revenues are underexploited;*
- *follow a bottom-up approach for review of operations and maintenance expenditure;*
- *hold stakeholder consultations;*
- *require the airport operator to project revenues; and*
- *not provide for error correction for variation in revenue.*

*Clauses 8.9, 11.1 to 11.7, 13.1, 17.5 .10 of Order No.13 and clause 4.2.5, entire clause 5 and clause 6.21.3 contain the proposed modes of regulation of services other than regulated services.*

*Observations: The Authority's proposed regulations amount to a completely intrusive regulation of services other than regulated services. The proposed regulations pose a fundamental question of jurisdiction of the Authority. Under Section 13 of the AERA Act, the Authority's functions extend only to determination of tariffs for aeronautical services. In the exercise of this function, the Authority cannot extend its jurisdiction to regulate, in any manner, the provision of services other than regulated services. Even under a Single Till mechanism (which is inapplicable to BIAL), the Authority need not undertake any regulatory activities in relation to services other than regulated services. The proposed regulations will make inroads into operational freedom of the airport operator apart to acting as a disincentive for the development of revenues from services other than regulated services. There is no jurisdiction in law for the Authority to call upon the airport operator to forecast expenditure in relation to services other than regulated services. Additionally, it is extremely difficult for the airport operator to forecast with any certainty either the revenues or expenditure for non-aeronautical services. Predictability in respect of aeronautical services itself is extremely low and depends on multiple variables. In such circumstances, to expect the airport operator to forecast revenues from non-aeronautical services is an equally difficult task. The Authority's proposals to undertake scrutiny of bottom-up projections of revenue made by the airport operator; benchmarking of revenue levels; commissioning experts to ascertain whether opportunities for such revenues are underexploited are likewise, beyond the ambit of functions of the Authority and the Authority wholly lacks jurisdiction to do so. Such an exercise, apart to being impermissible,*

would be a complete disincentive to the airport operator to exploit revenues from services other than regulated services. Effectively, by way of the proposed regulations, the Authority has proposed to completely regulate services other than regulated services. Also, by effect of the proposed regulations under the Single Till regime, any revenues that may be garnered by the airport operator are ploughed back to subsidize regulated services and therefore, the concept of airport operator's freedom is only illusory and only notional. In reality, under the proposed regulations, regulated services and services other than regulated services, are similarly treated, but for determination of tariffs. This is certainly not contemplated under the AERA Act and is opposed to the very objective of privatization, i.e. introduction of private capital and/or private management capacities.

*Submissions:* The proposed regulations are completely antithetical to the provisions of the AERA Act and any form of regulation of services other than regulated services inter alia as provided in clauses 8.9, 11.1 to 11.7, 13.1, 17.5.10 of Order No.13 and clause 4.2.5 and entire clause 5 of Direction No.5, need to be revisited and dropped. There can no regulation of any nature with respect to services other than regulated services, even under a Single Till regime. Without prejudice to the above, the Authority need to provide for error correction with respect to revenues from services other than regulated services.

#### **Services Other Than Regulated Services**

*Tariffs for services excluded from the scope of regulation in Article 10.3 of the Concession Agreement should not be determined or regulated.*

*Tariffs for the services of cargo facility, ground handling and fuel supply also should not be determined or regulated since the same fall under services that are not to be regulated as per the Concession Agreement. For Mumbai and Delhi airports, services of cargo facility and ground handling are not regulated since the same have been excluded in the respective OMDA. Rule of parity demands that similar treatment be accorded to BIAL.*

#### **(b) Authority's examination of BIAL's submission on Revenue from other than Aeronautical Services**

##### Submissions made by BIAL regarding Airport Order and Guidelines on Non-Aeronautical Charges

18.27 The Authority has carefully considered BIAL's submission on Services other than Regulated Services and Revenue from such Non-regulated services. Under the Single Till mechanism that was proposed by the Authority in its guidelines, the principle prescribed by the Authority was to scrutinize all the items comprising the Regulatory Building Block and has accordingly included criteria for scrutiny of the Revenue from Non-Aeronautical services.

18.28 The Authority has reviewed BIAL's submission on requirement not to regulate the tariff for

Cargo facility, ground handling and fuel supply as they are not to be regulated as per the concession agreement and that for Mumbai and Delhi airports they were not regulated. BIAL's understanding that the services were not regulated in Mumbai and Delhi Airport is incorrect as the tariff for these aeronautical services has been determined by the Authority in these airports also. The tariff so determined is also available on the Authority's website.

18.29 In view of this being the first control period and in view of the expansions proposed and its possible impact on the Non-Aeronautical revenues, the Authority proposes to accept the submission of BIAL to true up the Non-Aeronautical revenues based on the actual results for the Control period.

#### **BIAL's projections on Revenue from Non-Aeronautical Services**

18.30 The Authority has carefully considered BIAL's submission on Non-Aeronautical Revenues.

18.31 The revenue details provided by BIAL translates to average per pax revenue as detailed below:

**Table 111: Average Per Pax revenue as proposed by BIAL**

<b>Year Ending</b>	<b>31-Mar-12</b>	<b>31-Mar-13</b>	<b>31-Mar-14</b>	<b>31-Mar-15</b>	<b>31-Mar-16</b>
No of Passengers mn. as projected by BIAL	12.71	11.57	12.62	14.11	15.71
Revenue per pax (Total)	185.71	199.09	202.51	198.52	187.01
Revenue per pax – Aviation Concession	74.10	73.93	70.01	64.49	59.00
Revenue per pax – Non-Aviation Revenue	111.61	125.16	132.50	134.03	128.01

18.32 The Authority's analysis against each head of revenue are as given below:

18.33 **Aerobridge charges:** The Authority notes that the Operator proposes to introduce additional Aero Bridges as part of its Terminal Expansion plans which are likely to be completed in 2013-14. However, no increase in % of aircrafts using Aerobridge, Charge per aircraft has been considered by BIAL for the 5 years in the control period.

18.34 The Authority also notes that as part of its Annual Tariff Proposal (ATP) submission, BIAL does not propose to charge Aerobridge charges and proposes to increase its ARR submission and accordingly recomputed the yield.

18.35 Hence, the Authority does not propose to consider Aerobridge charges as part of Non-Aeronautical Revenues, and has accordingly recomputed the Yield.

18.36 **Terminal Entry Charges:** The Authority notes that BIAL has earned a nominal terminal entry charge of Rs. 0.3 Crores in the year 2010-11. No terminal entry charges have been projected by the company during the control period.

18.37 **ICT Charges:** The Authority notes that ICT Charges are projected as part of Non-Aeronautical



Revenues by BIAL as detailed in Table 109. The Authority notes that these charges are proposed to be recovered from users of the service. BIAL, in its revised MYTP submission in November 2012, has stated as follows on functioning of ICT department:

*“To put it in perspective, the business model followed in AAI Airports (till private airports came in) was for respective airlines and concessionaires to design and deploy and manage their own systems and services. This resulted in “siloesd” approach and the airlines/ concessionaires were NOT leveraging the benefits that accrue with Shared Common Infrastructure that most International Airports deploy now.*

*Bangalore International Airport being one of the Greenfield airports readily opted to don the role of a Service Provider for ICT services and delivered services through the BIAL ICT department. This approach has allowed all airlines and concessionaires to dispense with their own dedicated IT set up – be it outsource or insource; but to ‘consume the services’, serviced through enterprise class devices and managed on 24x7 basis by BIA ICT department. The Common Infrastructure also avoids disparate Infrastructure Installations at different points in time in a Secure Airport Environment.*

*Also to be noted is the fact that the model chosen at BIAL is an Insource model for the Service delivery and ICT department is fully responsible to carry out all the phases of Service Delivery – Plan, Design, Installation and Operations and Maintenance for all the ICT services deployed on 24x7 basis. For the Terminal expansion many of the ICT services are delivered and Project management is done by ICT department itself.*

*BIAL ICT from AOD 25<sup>th</sup> May 2008, has been the ICT service provider and has ensured to not only match any IT Company as a “service provider” but has also set a benchmark for Airport ICT services with consistent high availability and Service uptime of all ICT services (99.99% or 100% uptime). As a service provider, BIA has adhered to industry standards and benchmarks like ITIL standards and ISO 20000 standard for IT services and delivery models.*

*Most airports have engaged an External Service provider to extend common PAX services (CUTE, CUSS and BRS) and charge Airlines directly on “**per boarded passenger’s**” basis. However, BIAL is providing these services directly to the Airlines. BIAL has NOT raised any Invoices on Airlines till date for these Passenger services directly. ICT department strives to add value to Customer experiences and does engage with airlines and concessionaires periodically and based on mutually agreed terms may introduce new services on an ongoing basis, to enhance the value proposition both to the passengers as well to the airlines.*

**Objectives:**

*To provide a common Passenger IT services to enable all passengers to have the same experience be it low cost airline or full fare airlines.*

*To keep enhancing Customer experiences and to meet life style needs with self service offerings to make the airport journey seamless.*

*To provide Shared Common IT Infrastructure for Airlines and concessionaires for any business applications.*

*To provide an Integrated IP Platform for the end-users data exchange ( IP v4 & IP v6 )*

*To provide a Closed user group Communication platform - Radios*

*To provide various managed IT Services for Airlines and concessionaires from a bouquet of ICT services.*

*To professionally manage on a 24x7 basis and benchmark BIA ICT to any other IT service provider in the Industry for Quality of Service and Service Standards.*

### ***Bird eye view of IT Services***

*Some of the common ICT services that are extended to all clients in the Airport campus for airport services and airport operations are listed here under:*

#### ***Airline/ Passenger Services:***

*CUTE services*

*CUSS services*

*BRS services*

*Public Announcement services*

*Airport Operations Database and Flight Information services*

*Internet / Wi-Fi Services*

*Trunk Mobile Radio services*

*IP Voice services*

*FAS – Fire Alarm Services*

*Electronic Safety and Surveillance Services – CCTV and Access Control Services*

*To support, the above services BIAL ICT provides other Shared Infrastructure and Services like Data Networks, IT security, Systems, Database services, Storage services, hardware services, Help Desk Services etc.*

*Apart from the above listed common services, “**Tailored ICT services**” are provisioned based on **specific customer requirements** and deployed and managed again on 24X7 basis.*

*The services are charged on “pay per use” basis for the backend services. For example if an entity needs managed firewall services, it takes the services as a managed services like from any other IT company/ service provider’s with similar SLA’s.*

*The pricing model is based on aggregation of all service costs for a given IT service and costs compounded over the total depreciation period. A service fee is computed and charged to the cost unit provided (Radios, Data ports, Telephones, etc.,). ICT invoices are then raised on monthly basis only for the Non-aviation services for their back offices....”*

18.38 From the above submission of BIAL, the Authority understands that ICT service is being directly provided by the Airport Operator – BIAL, to the airlines, passengers and other users of the airport. BIAL has considered the Revenue earned from these service as part of Non-Aeronautical Revenues. BIAL has also generally apportioned its common assets in specified ratios as defined in Para 8 above, which may also include assets used for rendering the Aeronautical services. To the extent the ICT Assets have been considered as part of Aeronautical assets, and costs incurred to provide the services are considered as part of Aeronautical Operating expenditure, under Dual Till, this would mean that the return on these assets are provided as part of the Aeronautical charges whereas the revenues are considered as part of Non-Aeronautical assets. The Authority notes that BIAL has not considered the revenues from ICT services as part of the Aeronautical services and submitted the same for tariff determination. While the Authority proposes to consider the submission made by BIAL on the same, it proposes to review the same, based on additional information to be received from BIAL, at the time of final order for tariff determination.

18.39 **Advertisement and Promotion:** The Authority notes that no break-up/ details have been provided for the same by the company. Also there is a negative growth of A&P Revenue projected in 2012-13, which is not supported by details. The comparative growth rates as compared to the previous period are as tabulated below:

**Table 112: Comparative Growth rates of A&P Revenue**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
A&P Revenue share	33.62	29.70	32.72	36.81	37.00
Change as compared to previous year	38%	-12%	10%	12%	1%

18.40 The Authority also notes that BIAL proposes to commission the expansion of T1 during the year 2013-14 which may consequently result in increased space availability from that date.

18.41 **Retail revenue:** The Authority notes that no increase in revenue, even a minimum inflation based increase has been proposed in income by BIAL on revenues for the 5 years.

18.42 **F&B Revenue:** The Authority notes that no increase in revenue, not even the minimum inflation rate based increase has been proposed in any stream of F&B revenue by the company on revenues for the 5 years, except for a minor change in 2012-13 as compared to 2011-12. Revenue share per pax has in fact reduced in future years as compared to 2011-12 in case of F&B International.

18.43 **Rent & Land Lease:** The Authority noted that no increase in annual rentals have been projected by the company, except for a minor increase from 2012-13 as compared to 2011-12, Revenue from Hotel land lease has not been projected from 2013-14 onwards as the Hotel issue is under arbitration.

18.44 **Utilities:** The Authority notes that no increase in demand and no increase in rate / unit have been estimated by BIAL

18.45 **Common Infrastructure Charge:** The Authority notes that the Operator proposes to introduce Common Infrastructure Charge on Passengers with effect from completed in 2013-14 from each Departing Passenger. The Authority also notes that as part of its Annual Tariff Proposal (ATP) submission under Single Till, BIAL proposes to charge this as part of Aeronautical Tariff. Hence the Authority proposes not to consider this as part of Non-Aeronautical Revenues and increase its ARR submission and accordingly re-compute the yield.

18.46 **Consideration of Interest Income:** The Authority noted that the Business Model submitted by BIAL does not project any interest income from cash maintained by the company. The Authority also noted that the company has earned an Interest of Rs. 29.09 crores from banks as can be seen from the Schedule to the audited financial statements of the company for the year 2011-12 and Rs. 16 Crores for the year 2012-13, which have however not been projected in the Financial Model and its submissions.

18.47 On enquiry to BIAL on why the Interest income has not been considered as part of Non-Aeronautical Income, BIAL has responded that:

*The interest income is from idle cash in the system which is result of cash generated out of promoters income. Hence the same is not offered in the projections even though the annual report of FY 2011-12 has Rs. 29 crore*

18.48 The Authority also noted that the company has projected a cash balance being available at the end of every year in the control period as follows:

**Table 113: Details of Projected cash balance as provided by BIAL – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Cash	158.31	146.35	63.92	22.26	68.22
DSCR Reserve	54.94	56.97	66.29	83.38	85.02
<b>Total Cash</b>	<b>213.25</b>	<b>203.32</b>	<b>130.21</b>	<b>105.65</b>	<b>153.24</b>

18.49 While the normal cash balance projected is low, the company is required to maintain in liquid cash, the reserves required to be maintained as per the covenants of the loan agreements viz 1 quarter principal and Interest for 1 month. As these are cash balances maintained for business purposes, it is proposed that Interest income should be projected and included as part of Non-Aeronautical Revenues.

18.50 The Authority notes the response provided by BIAL on the Interest Income. However, as the Profits that may remain as Retained earnings are considered as part of the Equity balance for Gearing purposes, the Authority proposes to consider the Interest income earned and projected as part of the Non-Aeronautical Revenue. The Authority proposes to estimate the interest on cash balance that will be maintained by the company, as per its projections, at a nominal rate of 5% on the closing cash balance maintained in the previous year. The Authority also notes that BIAL has submitted certificate from a Chartered Accountant detailing the Interest received on the Security Deposit received for a hotel project, as stated in Para 6.10 above. The Authority proposes to consider the Interest Income, excluding the Interest earned on hotel deposits as part of the Non-Aeronautical Revenues.

18.51 Accordingly, the interest computed for the control period as given below:

**Table 114: Interest Income computed by Authority for the period 2013-14 to 2015-16 – Rs. Crore**

Particulars	2013-14	2014-15	2015-16
Opening cash balance maintained	308.48	162.82	107.64
Interest on opening cash balance	15.42	8.14	5.38

18.52 **Comparison of Estimates with the Actual numbers** – 2011-12 and 2012-13: BIAL has estimated the revenues for the period 2011-12 to 2015-16, being the revenues for the first control period. As the financial year 2011-12 and 2012-13 has completed, the audited financial statements for these years are available. The Authority proposes to correct the Projections based on the actual revenues earned during 2011-12 and 2012-13.

18.53 **Ground Handling Charges:** BIAL has not proposed any Ground Handling charges to be included in the business plan. The Authority notes that the company has earned revenue of Rs. 0.6 Crores from Ground Handling charges in 2011-12.

18.54 Pursuant to the query raised by the Authority, BIAL has clarified that:

*“At BIAL we don't have ground handling revenue, instead rental revenues are collected from Ground handling concessionaires. A revenue was being collected from sub-contractors of ground handlers previously. The same is not projected due to non-clarity on the same”*

18.55 Authority had, based on review of this submission, asked for BIAL to clarify if in that case the Ground Handlers were not their Agents. Response from BIAL on the same and Authority's analysis are detailed in Para 25.5 below.

18.56 The Authority also proposes to consider Revenues from Fuel Through put as an Aeronautical Service and proposes to consider the same as part of ARR and determine the charges. This is

elaborated in Para 19 below.

18.57 To summarise, the Authority proposes to carry out the following changes to the Non-Aeronautical revenues proposed by BIAL.

18.57.1 To consider interest income, except that earned from deposit received for Hotel, as Non-Aeronautical revenues.

18.57.2 To correct the Non-Aeronautical revenues projected by BIAL for 2011-12 and 2012-13 based on the actual results

18.57.3 To consider a CPI based increase in Non-Aeronautical revenues for the period 2013-14 to 2015-16, where no increase has been projected by BIAL.

18.58 Also, changes to estimated passenger traffic numbers have been made based on the details specified in Traffic Forecast as given in Para 11 above.

18.59 **Recomputed Revenue from Non-Aeronautical Services:** In accordance with the above, the recomputed Non-Aeronautical revenues are as given below:

**Table 115: Recomputed Revenue from Other than Aeronautical services proposed by the Authority – Rs. Crores**

Particulars	11-12	12-13	13-14	14-15	15-16
Aerobridge Charges	-	-	-	-	-
Cargo	28.41	27.10	24.86	25.38	25.45
Fuel Farm	0.62	0.55	0.56	0.56	0.57
Flight Catering	5.22	5.60	6.11	6.61	6.70
Ground Handling	0.62				
Sub-Total – 1	34.87	33.25	31.53	32.55	32.71
Landside Traffic	22.63	29.30	30.00	33.47	38.33
Terminal Entry	0.26	0.30	-	-	-
Retail	28.73	33.90	35.05	41.42	48.66
Food & Beverage	13.43	14.00	16.51	19.51	22.94
Advertising and Promotion	33.62	36.90	32.72	36.81	37.00
Rent and Land Lease	25.91	26.90	24.88	38.57	43.89
Utility Charges	5.32	5.30	5.63	5.63	5.64
ICT	11.83	12.50	12.60	14.33	16.78
Others	1.59	2.90	-	-	-
Common Infrastructure Charges	-	-	-	-	-
Sub Total - 2	143.32	162.00	157.39	189.74	213.25
Interest on Cash	22.98	9.94	15.42	8.14	5.38
Total	201.17	205.20	204.34	230.43	251.35

18.60 **Consideration of ISPs as agents – as per the appeal filed by BIAL:** BIAL has, stated in its affidavit before AERAAT that the persons providing CGF services are acting as agents of the Principal

– BIAL. Relevant extract of the appeal filed by BIAL is reproduced below:

*“The Authority has failed to appreciate that the ISPs are sub-contractors and consequently agents of the appellant – Principal and the Authority could not have regulated such Agents directly”*

*“The appellant is entitled under the Concession Agreement to appoint sub-contractors by granting such sub-contractors the service provider rights. However it is the appellant who remains solely responsible for carrying out the services of inter alia cargo facility, ground handling, supply of fuel to aircraft. Thus the Appellant is carrying out its contractual obligations through the ISPs who are Appellant’s agents/sub-contractors.”*

*“It is trite law that the Principal acts through the agent and all actions of the agent are attributable to the Principal. In the premises, the Authority could not have issued the Impugned guidelines to the ISPs who are merely the agents of the Appellant – Principal”*

18.61 The classification of revenue from services (other than CGF) is revenue from non-aeronautical services both in Single Till and Dual Till because these services (other than CGF) are not Aeronautical services as per the AERA Act. However, as far as the services of CGF group is concerned, all of these are Aeronautical services in AERA Act. Therefore, the classification of the revenue derived by BIAL for these three aeronautical services would depend on whether BIAL is himself providing these services or has concessioned them out to third-party concessionaires.

18.62 According to the approach followed by the Authority in its previous orders of tariff determination, if these aeronautical services are provided by the airport operator himself, the revenue from these services accruing to and in the hands of airport operator are aeronautical revenues, if the service provider of these aeronautical services is also airport operator who is a regulated entity. The cost associated in providing these aeronautical services are the costs incurred by the service provider (in this case, airport operator) and are reckoned for calculation of net income in the hands of the airport operator for providing these three aeronautical services.

18.63 BIAL has classified these three services (CGF) as Aviation Concessions under Non-aeronautical revenue and classified the revenue from these three services as Non-aeronautical revenue. In as much as these three services are clearly aeronautical services under the AERA Act, and further if BIAL is himself providing these three services (considering the affidavit filed by BIAL before AERAAT), the revenues from these services would have to be classified as Aeronautical revenues in the hands of BIAL. As stated by BIAL in its affidavit, the persons providing the services are its agents, therefore BIAL has adopted a mechanism of appointing agents to provide these three

aeronautical services, and that the **relationship** between BIAL and such persons is that of service provider and its agents. According to BIAL it should be regulated for providing these three services and not the persons (agents). Hence, the gross revenue generated from these three services would need to be reckoned as aeronautical revenue in the hands of BIAL. The nature of this revenue would remain aeronautical revenue both under Single Till as well as Dual Till.

18.64 However, if the persons providing services of CGF are not the agents but third-party concessionaires, classification of the services, namely, CGF still remains that of Aeronautical services. This is because, the **nature of the services like CGF is independent of who is providing these services** and is explicitly defined in the Act as aeronautical services. Hence if these three services (CGF) are provided by the airport operator through third party concessionaire, a view could be taken that still it is the airport operator who has caused these three services to be provided by such appointed third-party concessionaire. However, in such case, the third-party concessionaire becomes the actual provider of the services and thus they are the regulated entities. The revenue which such third-party concessionaires give to the airport operator is in the nature of concession revenue, generally, in the form of revenue share (apart from other likely elements like lease rents, dividend or royalty, if any, etc. In this case, the revenue accruing to the third party concessionaire through these three services is reckoned as aeronautical revenue for the concessionaires who are regulated accordingly to determine the charges for these aeronautical services. The revenue share paid by such concessionaire (giving services of CGF) to the airport operator will then be classified as non-aeronautical revenue in the hands of the airport operator and is a cost for the concessionaire in providing these three aeronautical services. This distinction of classifying the revenue in the hands of the airport operator as aeronautical service but non-aeronautical revenue if these three services are provided by third-party concessionaire (Independent Service Provider concessionaires) is to keep the revenue streams in the hands of the third-party concessionaire and that in the hands of the airport operator distinct, tractable and transparent.

18.65 With such an approach, if the aeronautical services of CGF are provided by third-party concessionaire, the revenue share to the airport operator is classified as non-aeronautical revenue both under Dual Till and Single Till.

18.66 The following table will make the classifications clear:

**Table 116: Manner of treating CGF Services**

Particulars	Single Till		Dual Till	
	CGF	Non-Aero other than CGF	CGF	Non-Aero other than CGF
BIAL's Classification (Does not depend on whether persons providing CGF are agents of BIAL or not)				
BIAL's Classification (CGF)	<b>Non-Aero</b>		<b>Non-Aero</b>	
BIAL's Classification (other than		<b>Non-Aero</b>		<b>Non-Aero</b>



Particulars	Single Till		Dual Till	
	CGF	Non-Aero other than CGF	CGF	Non-Aero other than CGF
CGF				
Authority's Classification (Depends on whether persons providing CGF are agents of BIAL or not)				
If Persons providing the service are agents/sub-contractors of BIAL	<b>Aero</b>	Non-Aero	<b>Aero</b>	Non-Aero
If Persons providing the service are third party concessioners of BIAL and not its agents	<b>Non-Aero</b>	Non-Aero	<b>Non-Aero</b>	Non-Aero
CGF: Cargo, Ground Handling and Fuel Supply. These services are defined as "aeronautical Services" under the AERA Act				

18.67 The Authority's deliberations on this matter have been detailed in Para 25 below.

**Proposal No 13. Regarding Revenue from Other than Aeronautical Services**

**13.a. Based on the material before it and its analysis, the Authority proposes:**

- i. **Not to consider Aerobridge charge and Common Infrastructure Charge as part of the Non-Aeronautical Revenue and consider these charges as Aeronautical charges for computation of Yield**
- ii. **To review the assets and costs incurred for incurring ICT services and appropriately consider the same in the determination of tariff at the time of final order as to whether the costs and revenue are included in Aeronautical or Non-Aeronautical section.**
- iii. **To consider Interest income earned as part of Non-Aeronautical Revenue, except for Interest earned on Security deposit received from Hotel project.**
- iv. **To consider the actual Non-Aeronautical Revenue for the period 2011-12 and 2012-13 and projections for the balance period**
- v. **To consider the resultant Non-Aeronautical revenue as computed by the Authority and presented in Table 115.**
- vi. **To accept BIAL's proposal to true up the Non-Aeronautical Revenue based on the actual revenues earned by BIAL during the control period, at the beginning of the next control period.**

## 19 Treatment of Cargo, Ground Handling & Fuel Through put Revenues

### (a) BIAL's Submission on Treatment of Cargo, Ground Handling & Fuel Throughput Revenues

19.1 As per BIAL's initial submission dated 14<sup>th</sup> September 2011, BIAL had classified the revenues from Cargo, Fuel Farm and Ground Handling activities under Aviation Concessions (under both Single and Dual Till submissions).

19.2 In their revised submission dated 21<sup>st</sup> November 2012, BIAL submitted that

*"The revenue from services other than the aeronautical services viz., from Non-aeronautical Revenue (NAR) was focused and treated as standalone services right from the inception. The initial business plan and financial model has been prepared with the premise that Aeronautical Revenue and Non Aero Revenues being treated distinctly. Also, Government of Karnataka (GoK) has provided financial support of Rs.335 Cr as viability gap funding loan to improve the viability of the project and enhance the bankability of the initial phase by entering into State Support Agreement (SSA) only based on the above criteria".*

19.3 Further, BIAL has stated that *"BIAL was the first PPP airport and is a pioneer in developing, maintaining and running the airport operations which primarily aims at focusing on its core competence viz., airport operations. This being the fact, BIAL has concessioned the aviation concessions and NAR activities to the experts / market leaders".* Explaining the process of selecting the professional partners / concessionaires for concessioning the aviation activities, BIAL has stated that *"BIAL has selected professional partners / concessionaires based on international bidding process who will provide various services such as Cargo Facility, Ground Handling, Aviation Fuel, Flight Catering, Retail, Food & Beverages, Advertising and so on. The process mainly ensured competitive price structures and defined the adequate quality standards to be complied with, at minimum. Also, it was ensured that a minimum of 2 concessionaires operate in every business so as to safeguard adequate competition and better service to end users."*

19.4 In respect of the Cargo, Fuel Farm and Ground Handling activities under Aviation Concessions, BIAL has entered into Service Provider Right Holder Agreement (SPRH) with service providers wherein BIAL is entitled for agreed percentage of Revenue share on gross turnover or Minimum Annual Guarantee (MAG) whichever is higher.

19.5 As regards the treatment of NAR, BIAL has stated that:

*"As per Article 10 of the Concession Agreement (CA) read with Schedule-6, Regulated Charges i.e., Landing, Parking, Housing, PSF and UDF are only to be regulated. Further, as*

*per Article 10.3 of CA, BIAL is free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the site, other than the facilities and services in respect of which Regulated Charges are levied.*

*Based on the above, the revenue from various services other than Regulated Services has been considered as NAR.”*

19.6 BIAL has also stated that the Projections of Non-Aeronautical Revenues are based on the business plan projections submitted by Concessionaires as per agreement entered into with BIAL. Further BIAL has also stated that *“AERA has determined the tariff for aviation concessionaires’ viz., Cargo facility, Fuel Farm, Into plane services and Ground handling facilities operating at BIAL and have issued Order No.19,20,21,22& 23 of 2011-12. BIAL has considered in the MYTP, the revenue projections submitted by these concessionaires to AERA and subsequently approved by AERA.*

19.7 BIAL have in their presentation made before the Authority on 8<sup>th</sup> April 2013 submitted as under:

*“Tariffs for the services of cargo facility, ground handling and fuel supply also should not be determined or regulated since the same fall under services that are not to be regulated as per the Concession Agreement.”*

19.8 The Authority notes that as BIAL has engaged other Concessionaires to carry out the activities of Ground Handling Services, Cargo facility and Supplying fuel to the aircraft and BIAL has considered the same as “Non-Aeronautical Revenues” in the MYTP under both Single and Dual Till. The details of these “Aeronautical Activities” that have been concessioned by BIAL and whose Revenue has been considered as “Non-Aeronautical Revenues” by BIAL are as under:

**Table 117: Details of Aviation concessions**

<b>Aeronautical Service</b>	<b>Independent Service Provider</b>	<b>Service</b>	<b>Revenue considered by BIAL</b>
Ground Handling Services	Air India SATS Services (AISATS)	Airport	BIAL have clarified that BIAL does not have Ground Handling Revenue and BIAL gets only Rentals from the Service providers. BIAL has entered into separate rental contracts under which conditions the space is being made available to the service provider, including the fees payable therefore. The rental contract are co-terminus with the SPRH Agreement
	Globe Ground India Pvt Ltd (GGI)		
Cargo facility	Menzies Aviation Bangalore (MABB)	Bobba	Minimum Annual Guaranteed Turnover Fee, part of the Turnover Fee (being 18% of the Gross-Turnover of the SPRH in each relevant Financial Year) that is due
	Air India SATS Services (AISATS)	Airport	

Aeronautical Service	Independent Service Provider	Revenue considered by BIAL
	Express Industry Council of India (EICI)	to the Airport irrespective of the actual Gross Turnover. The amount of the MAG Turnover Fee for each Financial Year is specified in Schedule C of the respective SPRH Agreements
Into Plane Service	Indian Oil Sky Tanking Ltd (IOSL)	BIAL receives as Airport Operator Fee an amount equal to 5% of the gross turnover of the ITP Service Provider.
	Bharat Star Services P Ltd (BSSPL).	
Fuel Farm	Indian Oil Sky Tanking Ltd (IOSL)	IOSL is charging Rs. 1500/KL and has termed it as Fuel Throughput Fee. This Fuel Throughput Fee has two components – “Airport Operator Fee” (viz., Rs. 1067/KL) payable to BIAL and “Operating Cost and Reserve Fund” (viz., Rs. 433/KL) retained by IOSL.

19.9 “Aeronautical Activities” concessioned by BIAL and whose Revenue has been considered as “Non-Aeronautical Revenues” in BIAL’s tariff model is as under:

**Table 118: Details of Aeronautical activities concessioned out, as submitted by BIAL – Rs. Crores**

Particulars	2012	2013	2014	2015	2016
Ground Handling Services					
Cargo facility	28.43	27.63	28.85	29.46	29.57
Into Plane Service	0.62	0.55	0.55	0.56	0.56
Fuel Farm	51.03	43.71	44.15	44.59	45.04

**(b) Authority’s examination on BIAL’s submission on Treatment of Cargo, Ground Handling & Fuel Throughput Revenues**

19.10 The Authority has carefully considered the submissions of BIAL in respect of revenue received from cargo, ground handling and fuel farm.

19.11 The Authority had in its DIAL and MIAL Tariff Determination Order (Order No 3/2012 dated 24<sup>th</sup> April 2012 and 32/2012 dated 15<sup>th</sup> January 2013), extensively dealt with the issue of treatment of revenue from Cargo and Ground Handling in respect of DIAL (Paras 21.6.18 to 21.6.27 refers) and MIAL (Paras 20.1 to 22.81). It had stated therein that the revenue in the hands of the airport operator on account of rendering Cargo and Ground Handling services (being aeronautical services as per the AERA Act) by the Airport Operator himself would be treated as Aeronautical revenue. However, if the airport operator has outsourced these services to a third-party concessionaire (which may or may not include JV), the revenues which the airport operator would receive from such third-party concessionaire would be treated as Non-Aeronautical revenues.

19.12 As per the AERA Act aeronautical services, namely, Ground Handling, Cargo Facility and Supply of Fuel to the aircraft are defined as aeronautical services under Section 2(a) of the Act.

19.13 The Authority had, therefore, while arriving at the above-mentioned approach of treatment of revenue from Cargo and Ground Handling services taken into account these provisions of AERA Act, noting that the AERA Act specifies cargo service as an aeronautical service and thus has to be regarded as such.

19.14 The Authority has given its detailed comments on the treatment of cargo service as an aeronautical service and treating revenue in the hands of the airport operator therefrom as aeronautical revenue, as long as this service is provided by the airport operator himself. It had mentioned that the classification of cargo service as aeronautical service has been done in the AERA Act. It notes that the Government has also regarded cargo service as aeronautical service.

19.15 The Authority has also noted the legislative intent in putting services like cargo and ground handling in the category of aeronautical services. The Department Related Parliamentary Standing Committee on Transport, Tourism and Culture, in Para no. 31 of its 133<sup>rd</sup> report on the Airports Economic Regulatory Authority of India bill 2007, had recommended to include the fuel supply infrastructure at the airports within the purview of the Authority, a recommendation which was accepted by the Ministry and accordingly fuel supply was included as an aeronautical service. The Authority also notes that in addition to fuel supply, the Government had also, suo-moto added the two services, namely, 'ground handling service relating to aircraft, passengers and cargo at an airport' as well as 'the cargo facility at airport' within the definition of aeronautical services. Hence, the Authority had inferred that the revenues from cargo service if and as long as provided by the airport operator would be treated as aeronautical revenues in his hands.

### ***Cargo Facility Services***

19.16 The Authority has noted from BIAL's submission that there are two agencies providing ground handling services at Bengaluru International Airport viz., Air India SATS Airport Services Pvt Ltd. and Menzies Aviation Bobba Bangalore Pvt Ltd.

19.17 The Authority has determined tariffs in respect of services provide by these two Independent Service Providers [ISP(s)] vide its Orders – Order No 22/ 2011-12 dated 25.10.2011 and 44/2012-13 dated 01.03.2013 for Air India SATS Airport Services Pvt Ltd and Order No 21/2011-12 dated 25.10.2011; 16/2012-13 dated 20.09.2012 and 14/2013-14 dated 10.06.2013 for Menzies Aviation Bobba Bangalore Pvt Ltd.

19.18 The Authority has observed from the tariff model that the revenue in the hands of BIAL from the provision of Cargo services at Bengaluru International Airport, Bangalore is in the form of a revenue share from these two ISPs. In the tariff model, BIAL has not furnished the break-up of revenue earned from the two ISPs. It has presented a single stream of revenue from Cargo services. Historical numbers till FY 2011-12 are based on the actuals in the hands of BIAL. BIAL has submitted

that its projection of Revenue share from Cargo activities is based on the estimated revenues submitted by the concessionaires to the Authority for determination of their tariff. BIAL has considered the revenues from the Cargo handling activities as part of Non-Aeronautical revenues in the tariff model.

19.19 In addition, the Authority has noted that one of the cargo service providers viz. AI SATS appears to have accommodated Express Cargo activities to Express Industry Council of India (EICI) that is rendering Express Cargo facility service for which EICI is paying rental to AI SATS. The Authority vide its Order No. 16/ 2013-14 dated 21<sup>st</sup> June 2013 has determined the tariffs of EICI for Express courier cargo facility service. It thus appears that BIAL has no direct linkage with EICI.

19.20 The Authority has noted that as per Schedule 3: Part 1 – Airport Activities of the Concession Agreement between Ministry of Civil Aviation and BIAL, Cargo handling and Cargo terminals form part of Airport Activities. The Authority further noted that charges levied in respect of these Cargo Handling services are not included in the Schedule 6 of the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the Authority has undertaken the determination of tariff in respect of Cargo Handling Services at Bengaluru International Airport, Bangalore vide its Orders referred in Para 19.17 above

19.21 As discussed above, BIAL has concessioned out the Cargo Handling Services to third party ISPs and thus the revenue accruing to BIAL from these third party ISPs is proposed to be considered as non-aeronautical revenue in the hands of BIAL.

19.22 In view of the above, the Authority notes that the treatment of revenue from Cargo Handling Services in the hands of BIAL under Single Till as well as Dual Till remains the same.

### ***Ground Handling***

19.23 The Authority has noted from BIAL's submission that there are two agencies providing ground handling services at Bengaluru International Airport viz., Air India SATS Airport Services Pvt Ltd. and Globe Ground India Pvt Ltd.

19.24 The Authority has determined tariffs in respect of services provide by these two Independent Service Providers [ISP(s)] vide its Orders – Order No 23/ 2011-12 dated 25.10.2011 and 18/2012-13 dated 01.10.2012 for Air India SATS Airport Services Pvt Ltd and Order No 24/ 2011-12 dated 17.10.2011 and 19/2012-13 dated 12.09.2012 for Globe Ground India Pvt Ltd.

19.25 The Authority has observed from the tariff model that the revenue in the hands of BIAL from the provision of Ground Handling services at Bengaluru International Airport, Bangalore is only in the form of Rentals for space provided to the Ground handling agencies. BIAL has considered these rentals from Ground Handling agencies as part of Non-Aeronautical revenues in the tariff model.

19.26 The Authority has noted that as per Schedule 3: Part 1 – Airport Activities of the Concession

Agreement between Ministry of Civil Aviation and BIAL, Ground Handling Services and Ground Handling equipment form part of Airport Activities. The Authority further noted that charges levied in respect of ground handling services are not included in the Schedule 6 of the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the Authority has undertaken the determination of tariff in respect of ground handling services at Bengaluru International Airport, Bangalore vide its Orders referred in Para 19.24 above

19.27 As discussed above, BIAL has concessioned out the Ground Handling services to third party independent service providers and thus the revenue accruing to BIAL from these third party independent service providers is proposed to be considered as non-aeronautical revenue in the hands of BIAL.

19.28 In view of the above, the Authority notes that the treatment of revenue from ground handling services in the hands of BIAL under Single Till as well as Dual Till remains the same.

### ***Fuel Farm Facility***

19.29 The Authority notes that BIAL has not made any specific proposal for the Throughput Fee earned from the Fuel Farm Facility at Bengaluru International Airport, Bangalore. BIAL has not made a separate submission in line with the Airport Guidelines in respect of the Eligible Yield per KL to be charged for its fuel farm services. BIAL has not also detailed any specific costs that are incurred for rendering these services.

19.30 The Authority notes from the BIAL's Fuel Facility Service Provider Right Holder Agreement dated 01.03.2006, that the SPRH comprising the consortium of Indian Oil Corporation Limited, Indian Oil tanking Limited and Sky tanking Holding GMBH were awarded the Service provider Right for the design, construction, financing, testing and commissioning of the fuel farm facility at Bengaluru International Airport, Bangalore.

19.31 Further, as per the Operating Agreement dated 01.03.2006, between BIAL and the SPRH comprising the consortium of Indian Oil Corporation Limited, Indian Oil tanking Limited and Sky tanking Holding GMBH (Operators), the Operator is responsible for collecting the Revenue from the fuel farm facility and disbursing the same. The Fuel farm Facility payments, Operating Costs, Throughput Fees, Operating Fee and Airport Operator Fee are in accordance with Part III of Schedule D of the Operating Agreement dated 01.03.2006.

19.32 Clause 13.1 of the Operating Agreement dated 01.03.2006, provides that the Operator shall calculate the Throughput Fees in accordance with Part III of Schedule D for each litre of ATF uplifted into an Air Carrier. Further, Clause 13.1.2 provides that the Throughput Fees shall be collected in accordance with the Supplier Agreements provided always that the Operator shall implement a charging policy which is fair and non-discriminatory between Suppliers regardless of the volume of

ATF supplied.

19.33 Clause 14.1 of the referred Agreement lays down the mechanism for application of the Throughput Fee revenue from the Fuel Farm Facility which will be applied to discharge the Facility Charges and Reserve Appropriation in order of priority as listed under:

- 19.33.1 Operating Costs to the Operator;
- 19.33.2 Airport Operator Fee to BIAL;
- 19.33.3 Facility Payments to the SPRH;
- 19.33.4 Operating Fee to the Operator; and
- 19.33.5 Reserve Appropriation.

19.34 Clause 14.3 of the Agreement provides that the Operator shall pay to BIAL, the Airport Operator Fee by monthly instalments, calculated in accordance with Part V of Schedule D. It further provides that the Airport Operator, Fee shall be, exclusive, of all Taxes, including any applicable service tax which shall be, payable by the Operator (in addition to the Airport Operator Fee) and recovered by the Operator through the Throughput Fee. The rates of the Airport Operator Fee payable during each financial year shall be notified to the Operator by BIAL in accordance with Part V of Schedule D of the Operating Agreement dated 01.03.2006.

19.35 Clause 14.6 of the Operating Agreement also states that BIAL shall establish the Reserve Fund and the Operator shall transfer the Reserve Appropriation into the Reserve Fund, by monthly instalments. It further states that the Reserve Fund shall be operated by BIAL who shall notify the Operator of the Reserve Appropriations that BIAL considers should be met during a relevant Financial Year.

19.36 Clause 14.6.3 further clarifies that if BIAL so determines, the proceeds of the Reserve Fund accumulated in a Financial Year may be utilized and carried forward as Revenue for the succeeding Financial Year in order to reduce the Throughput Fee applicable for such succeeding Financial Year.

19.37 The Authority has noted that as per Schedule 3: Part 1 – Airport Activities of the Concession Agreement between Ministry of Civil Aviation and BIAL, Aircraft fuelling services form part of Airport Activities. The Authority further noted that charges levied in respect of the Aircraft fuelling services / Fuel Farm services are not included in the Schedule 6 of the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the Authority has undertaken the determination of tariff in respect of services for supply of fuel for aircrafts at Bengaluru International Airport, Bangalore. Details of the Tariff determination Orders are as under:

Service Provider	Aeronautical Service	Orders
Indian Oil skytanking	Fuel Farm Services	No.05/2013-14 dated 22.04.2013
Indian Oil skytanking	Into Plane	19/2011/12 dated 25.10.2011; 25/2012-13 dated



Service Provider	Aeronautical Service	Orders
	Services	22.11.2012
Bharat Star Services P Ltd	Into Plane Services	20/2011/12 dated 25.10.2011; 26/2012-13 dated 22.11.2012

19.38 As regards the ITP Services, the Authority noted that these are in the nature of aeronautical services in terms of Section 2(a) of the Act. In the instant case, BIAL does not provide the ITP services themselves. The ITP services are being provided by the concessionaires (Indian Oil skytanking and Bharat Star Services P Ltd). These concessionaires, viz., the ITP service providers are regulated by the Authority and their rates have been approved by the Authority separately. BIAL only receives certain part of the revenue received by these ITP services providers as a concession fee. Therefore, the Authority is of the view that the concession revenue received by BIAL from the ITP service provider(s) may be treated as non-aeronautical revenue in the hands of BIAL.

19.39 As regards the Fuel Farm Services, the Authority notes that the Fuel Farm Operator is responsible for collecting the Revenue from the fuel farm facility and disbursing the same. The Authority had in its Consultation paper No. 46/2012-13 dated 14.03.2013 to consider the MYTP and ATP submitted by IOSL for Fuel Farm Services provided at BIA, Bengaluru, inter alia, made the following proposal for stakeholder consultation:

*“(ii) The Authority noted that the IOSL is charging Rs. 1500/KL and has termed it as “Fuel Throughput Fee”. This “Fuel Throughput Fee” has two components – “Airport Operator Fee” (viz., Rs. 1067/KL) and “Operating Cost and Reserve Fund” (viz., Rs. 433/KL).*

*(iii) The Authority decided that the “Airport Operator Fee” component of the said “Fuel Throughput Fee” charged by IOSL is to be determined as part of exercise of determination of aeronautical tariffs in respect of Bangalore International Airport.*

*(iv) The Authority tentatively decided to determine, for the time being, the amount of “Airport Operator Fee” at Rs. 1067/KL towards the component of fuel supply service provided by BIAL at Bangalore International Airport, till its final determination as part of aeronautical tariffs in respect of Bangalore International Airport, based on the tariff proposal submitted by BIAL. Hence, this amount viz., Rs. 1067/KL, which is being charged by BIAL as Airport Operator Fee, will continue to be charged by it presently. BIAL has been charging this fee since about 2008 and not made any increase thereto.”*

19.40 In response to the Authority’s proposal contained in the above mentioned Consultation Paper comments were received from Indian Oil Corporation Limited and Shell MRPL Aviation Fuels and Services Ltd. the stakeholders, in general agreed to the proposal proposed in the Consultation

paper.

19.41 Accordingly the Authority had in MYTO No. 05/2013-14 dated 23.04.2013, determined the "Airport Operator Fee" component of the tariff item "Throughput Fee" as part of the exercise of determination of tariff for aeronautical services provided by BIAL (i.e., the Airport Operator) at Bangalore Airport. The Authority also decided that, purely for the time being, the "Airport Operator Fee" component of "Fuel Throughput Fee" is determined at Rs. 1067/KL, till its appropriate final determination as part of aeronautical tariffs in respect of Bangalore International Airport based on the tariffs proposal submitted by BIAL. This "Airport Operator Fee" is being charged by BIAL as Airport Operator, towards the aeronautical service of supply of fuel provided by it.

**Proposal No 14. Regarding Treatment of Cargo , Ground Handling and Fuel Revenues**

**14.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To consider the revenue from Cargo and Ground Handling services and Into Plane services (provided by third party concessionaires) accruing to BIAL as non-aeronautical revenue for determination of tariffs of aeronautical services for the current control period.**
- ii. To note that the Fuel Farm Facility is operated by IOSL and the assets of this facility are also on the balance sheet of IOSL. To further note that IOSL is paying Fuel Through put charge of Rs. 1067 per KL to BIAL and that it is not paying any additional amounts towards revenue share. The Authority thus proposes to consider the Throughput Fee revenue from fuel farm service concessioned out by BIAL to IOSL as aeronautical revenue in the hands of BIAL.**

## 20 Inflation and WPI based Increase

### a BIAL's Submission on WPI

20.1 As per BIAL's submission, BIAL has considered a WPI as follows:

*The WPI figures are derived based on the forecasted Producer Price Index (PPI) values as provided by analyst's projections*

20.2 WPI has been considered at 8.90%, 7.58%, 6.17%, 5.96% and 5.76% for the 5 years in the Control period.

### b Authority's Examination of BIAL's Submissions on WPI

20.3 The Authority's examination of the issue is as follows:

20.4 The Authority notes that as per "Results of the Survey of Professional Forecasters on Macroeconomic Indicators – 22nd Round (Q3:2012-13)" the current forecast by RBI states that the WPI for next five years is revised to 6.5% per annum. Presented below is the relevant extract from the published report,

#### **Long Term Forecasts:**

*"Long term forecast for real GDP for the next five years (2013-14 to 2017-18) and the next ten years (2013-14 to 2022-23), is expected to be 7.3 per cent and 8.0 per cent, respectively. Over the next five years, inflation based on WPI and CPI-Industrial Workers is expected to be 6.5 per cent and 7.8 per cent respectively. Over the next ten years, inflation based on WPI and CPI-Industrial Worker is expected to be 6.0 per cent and 6.5 per cent respectively.*

#### *Long Term Forecasts for Growth and Inflation*

	Annual average percentage change over the next five years			
	Mean	Median	Max	Min
Real GDP	7.3	7.3	8.5	6.0
WPI	6.5	6.5	8.0	5.5
CPI-IW	7.7	7.8	10.0	6.5

Source: [http://rbidocs.rbi.org.in/rdocs/Publications/PDFs/01SPFMD250113\\_F.pdf](http://rbidocs.rbi.org.in/rdocs/Publications/PDFs/01SPFMD250113_F.pdf)

20.5 In view of the above, Authority proposes to consider WPI at 6.5% for determination of aeronautical tariffs in respect of Bengaluru International Airport during the current control period.

20.6 Further, the Authority is of the view that the actual inflation during the Control Period may differ from the forecast assumption considered presently and thus inflation may be trued up for each year of the current control period while determining the aeronautical tariff for Bengaluru International Airport for the next control period.

**Proposal No 15. Regarding Inflation**

**15.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To consider WPI at 6.5% for the current control period based on the latest assessment by RBI.**
- ii. To true up the WPI index for actual WPI index as may occur for each year of the Control Period, the effect of which would be given in the next control period commencing from 01.04.2016.**

## **21 Calculation of X factor**

### **a Authority's view on X factor**

21.1 The Authority, in its Guidelines, has provided the considerations behind the determination of the factor The Guidelines, in this regard, state as under,

*“The objective of targeted efficiency improvement, in the determination of X, is to simulate a competitive environment in a non-competitive situation by allowing Airport Operator to raise Tariff(s) to offset cost increases, but by a rate lower than inflation in order to encourage greater efficiency. The targeted efficiency improvement can be high, in case the Authority considers that there is high scope for efficiency and the Airport Operator needs to make more effective or efficient use of its resources. Also, the targeted efficiency improvement can be low, in case the Authority considers there is limited scope for efficiency improvement.”*

21.2 This is the first control period in respect of BIAL. The Authority, accordingly feels that the sufficient information on the determination of X factor for this control period may not be available and accordingly for the current control period, the Authority proposes to consider the X factor as Nil. The Authority also notes that determination of X-factor would require an independent study. The Authority proposes to conduct such a study and consider its results appropriately while determining the aeronautical tariffs for the next control period. Vide

#### **Proposal No 16. Regarding Calculation of WPI –X**

##### **16.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To consider X factor as NIL while determination of aeronautical tariff for the current control period.**

## 22 Sensitivity Analysis

22.1 As per the Base Model finalized by BIAL, the YPP number under Single Till submitted by BIAL is Rs. 454.81 and that under Dual Till is Rs. 635.55. The Authority has analysed BIAL's submissions on each of the regulatory building block and presented its analysis in the respective sections above. The summary of these sensitivity analyses under both Single Till and Dual Till is presented below

**Table 119: Summary of changes - Impact on ARR and YPP against the Base Case – Single Till**

Particulars	Aggregate Revenue Requirement (Rs. Crore)	Starting Yield per Pax (Rs.)
Base particulars as submitted by BIAL	3493.00	454.81
Revision of Cost of Equity to 16%	-595.38	-80.21
Other Changes to Pre-Control period shortfall claim - Loss before Airport Opening not allowed - Interest income considered as part of Non-Aeronautical Income - Not considering Bad Debts etc	-181.41	-28.59
Change in Traffic (Actuals as per 2012-13 considered)	6.93	-8.89
Considering Fuel Through put fee, Aerobridge Revenues, CIC as Aeronautical Income and added to ARR	339.17	43.20
Other Changes to ARR (a) True up Non-Aeronautical Revenue, Operating Expenditure, Asset Capitalisation for 2011-12 and 2012-13 (b) Changes to Cost of Debt (Actuals for 2011-12 and 2012-13, Cost of Debt with Ceiling as per proposals) (c) Depreciation allowed without Salvage value (d) Changes to Operating Expenditure and Non-Aeronautical Revenue estimates - Reduction in Other Staff welfare % projected, OMSA Performance fee reduced to 1.29%, O&M Cost % on Phase 2 assets retained at Phase 1 level, Non-Aero Revenue projected with CPI Increase from 2013-14 (e) Considering Interest Income as part of Non-Aeronautical Income (except Interest on Hotel Deposits) (f) Bad Debts not allowed, except for actual Bad Debts written off in 2012-13 which is allowed (g) Adjustment to Gearing for the above etc	-244.90	-28.38
<b>Recomputed ARR and starting Yield numbers</b>	<b>2817.41</b>	<b>351.94</b>
<b><math>ARR = RAB_{Total} \times FRoR + Depreciation_{Total} + Opex_{Total} + Tax_{Total} - NAR</math></b>		

**Table 120: Summary of changes - Impact on ARR and YPP against the Base Case – Dual Till**

Particulars	Aggregate Revenue Requirement (Rs. Crore)	Starting Yield per Pax (Rs.)
Base particulars as submitted by BIAL	4731.00	635.55

<b>Particulars</b>	<b>Aggregate Revenue Requirement (Rs. Crore)</b>	<b>Starting Yield per Pax (Rs.)</b>
Taxation and Concession fee on Aviation Concessions considered as part of Aeronautical Expenditure corrected	-155.90	-21.19
Revision of Cost of Equity to 16%	-688.10	-96.28
Other Changes to Pre-Control period shortfall claim - Loss before Airport Opening not allowed - Interest income considered as part of Non-Aeronautical Income - Not considering Bad Debts etc	-584.64	-92.83
Change in Traffic (Actuals as per 2012-13 considered)	2.30	-11.71
Considering Fuel Through put fee, Aerobridge Revenues, CIC as Aeronautical Income and added to ARR	0.98	0.07
Other Changes to ARR (a) True up Non-Aeronautical Revenue, Operating Expenditure, Asset Capitalisation for 2011-12 and 2012-13 (b) Changes to Cost of Debt (Actuals for 2011-12 and 2012-13, Cost of Debt with Ceiling as per proposals) (c) Depreciation allowed without Salvage value (d) Changes to Operating Expenditure and Non-Aeronautical Revenue estimates - Reduction in Other Staff welfare % projected, OMSA Performance fee reduced to 1.29%, O&M Cost % on Phase 2 assets retained at Phase 1 level, Non-Aero Revenue projected with CPI Increase from 2013-14 (e) Considering Interest Income as part of Non-Aeronautical Income (except Interest on Hotel Deposits) (f) Bad Debts not allowed, except for actual Bad Debts written off in 2012-13 which is allowed (g) Adjustment to Gearing for the above etc	-107.36	-10.67
<b>Recomputed ARR and starting Yield numbers</b>	<b>3198.28</b>	<b>402.94</b>
<b><math>ARR = RAB_{Aero} \times FRoR + Depreciation_{Aero} + Opex_{Aero} + Tax_{Aero}</math></b>		

22.2 As indicated in Para 6.19 above the recomputed ARR in Table 120 is based on the Pre-control period losses taken at Rs. 33.17 Crores. BIAL had indicated the Pre-Control losses at Rs. 528.8 Crores in their submission under Dual Till. The Authority recomputed the Pre-Control losses under Dual Till at Rs. 371 Crores. If the calculations are made of recomputed ARR under Dual Till based on the figure of Rs. 371 Crores, the ARR under Dual Till would work out to Rs. 3655 Crores (as compared to Rs. 3198 Crores in Table 120. Accordingly, the starting Yield number (Yield Per Passenger - YPP) would be Rs. 472.62 (as compared to Rs. 402.94) in Table 120. Accordingly, the transfer of resources from passengers to the Airport Operator under Dual Till and taking the Pre-Control period losses at Rs. 371 Crores also work out to Rs. 970.99 Crores as compared to Rs. 410 Crores referred in Para 26.169 below. However, for reasons mentioned in Para 6.19 above, the Authority has taken Pre-Control losses at Rs. 33.17 Crores.

## 23 Aggregate Revenue Requirement for BIAL (ARR) – Under Single Till and Dual Till

23.1 The aggregate revenue sought by BIAL and Yield Per Pax is as summarised below:

**Table 121: Aggregate Revenue Requirement and Yield as proposed by BIAL - Single Till – Rs. Crores**

Details	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB	1,569.83	1,579.54	2,395.22	3,148.27	3,063.61
Fair Rate of Return	15.41%	15.41%	15.41%	15.41%	15.41%
Return on average RAB at %	241.90	243.40	369.09	485.14	472.09
Operating Expenditure	210.21	274.22	303.90	391.52	445.23
Working Capital Interest	-	-	7.91	10.04	11.61
Depreciation	121.69	127.71	165.09	197.07	193.61
Corporate Tax	60.65	45.07	52.09	47.23	70.85
Less: Revenue from services other than Regulated services	(236.05)	(230.37)	(255.65)	(280.03)	(293.82)
Pre-control period losses	241.61				
Aggregate Revenue Requirement	640.02	460.03	642.43	850.97	899.56
Total ARR	<b>3493.00</b>				
No. of passengers (Crore)	1.27	1.16	1.26	1.41	1.57
Discounted ARR	640.02	398.61	482.33	553.59	507.06
Present Value	<b>2,581.60</b>				
Aeronautical Revenues computed	578.08	566.15	655.75	776.41	914.61
Present Value	<b>2,581.60</b>				
Yield per Pax (Rs.)	454.81				

**Table 122: Aggregate Revenue Requirement and Yield as proposed by BIAL - Dual Till – Rs. Crores**

Details	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB	1,279.01	1,296.68	1,974.02	2,590.94	2,522.98
Fair Rate of Return	17.09%	17.09%	17.09%	17.09%	17.09%
Return on average RAB at %	218.60	221.61	337.38	442.82	431.20
Operating Expenditure	174.37	232.81	251.51	323.53	367.66
Working Capital Interest	-	-	6.90	8.75	10.12
Depreciation	100.77	106.00	136.89	162.79	159.51
Corporate Tax	105.64	78.36	92.02	98.77	134.21
Pre-control period losses	528.80				
Aggregate Revenue Requirement	1,128.18	638.78	824.70	1,036.65	1,102.69
Total ARR	<b>4731.00</b>				
No. of passengers	1.27	1.16	1.26	1.41	1.57
Discounted ARR	1,128.18	545.54	601.52	645.75	586.63



Details	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Present Value	<b>3,507.61</b>				
Aeronautical Revenues computed	807.82	791.14	916.35	1,084.96	1,278.07
Present Value	<b>3,507.61</b>				
Yield Per pax (Rs.)	635.55				

23.2 After considering the change in assumptions that have been discussed above and summarised in Para 22 above, the reworked ARR for BIAL has been computed as under:

**Table 123: Recomputed Aggregate Revenue Requirement by the Authority - Single Till – Rs. Crores**

Details	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB	1,533.01	1,414.44	2,271.55	3,121.51	2,981.48
Fair Rate of Return	11.82%	11.82%	11.82%	11.82%	11.82%
Return on average RAB at %	181.13	167.12	268.39	368.82	352.27
Operating Expenditure	198.84	276.29	274.55	355.00	405.29
Working Capital Interest	-	-	7.26	9.27	10.75
Depreciation	134.39	135.73	181.18	222.78	215.68
Corporate Tax	32.05	24.52	23.05	3.63	28.72
Less: Revenue from services other than Regulated services	(201.17)	(205.20)	(204.34)	(230.43)	(251.35)
Pre-control period losses	33.17				
Aggregate Revenue Requirement	378.41	398.47	550.09	729.08	761.37
Total ARR	<b>2817.41</b>				
No. of passengers	1.27	1.20	1.31	1.46	1.63
Discounted ARR	378.41	356.37	439.98	521.52	487.07
Present Value	<b>2,183.33</b>				
Aeronautical Revenues computed	447.33	449.58	522.30	621.51	737.21
Present Value	<b>2,183.33</b>				
Yield Per pax (Rs.)	351.94				

**Table 124: Recomputed Aggregate Revenue Requirement - Dual Till – Rs. Crores**

Details	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB	1,249.24	1,151.09	1,862.86	2,571.42	2,458.83
Fair Rate of Return	11.81%	11.81%	11.81%	11.81%	11.81%
Return on average RAB at %	147.56	135.96	220.03	303.73	290.43
Operating Expenditure	157.09	228.85	217.43	281.00	320.78

Details	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Working Capital Interest	-	-	6.09	7.78	9.04
Depreciation	111.35	112.48	149.97	184.11	177.89
Corporate Tax	22.37	17.71	20.75	9.82	32.88
Pre-control period losses	33.17				
Aggregate Revenue Requirement	471.54	495.00	614.28	786.44	831.02
Total ARR	<b>3198.28</b>				
No. of passengers	1.27	1.20	1.31	1.46	1.63
Discounted ARR	471.54	442.71	491.35	562.61	531.70
Present Value	<b>2,499.91</b>				
Aeronautical Revenues computed	512.15	514.73	597.99	711.58	844.05
Present Value	<b>2,499.91</b>				
Yield Per pax (Rs.)	402.94				

## 24 Annual Tariff Proposals: Proposals of BIAL and computation of the Authority (under Single and Dual Till).

### (a) BIAL's Submissions on Tariff Structure/ Rate Card

24.1 BIAL, vide its submission dated 12<sup>th</sup> April 2013 (received on 16<sup>th</sup> April 2013), submitted its Annual Tariff Proposal (ATP) for FY 2013-14, FY 2014-15 and FY 2015-16. BIAL has stated as under:

*"Kindly refer to the revised MYTP submitted in Nov 2012. Pursuant to MYTP submitted, detailed Annual Tariff Proposal (ATP) applicable to 1st Regulatory Control period in respect of Aeronautical Services viz., landing, Housing & Parking, Passenger Service Fee (Facilitation), User Development Fee (UDF) for FY 2013-14 (effective from 1st May 2013), FY 2014-15 & FY 2015-16 are enclosed herewith vide Annexures (I & II) for your consideration and approval please. Further MYTP proposals were submitted under Dual Till & as well under Single Till, hence ATP proposals were also submitted under both proposals for needful consideration.*

*BIAL reserves the right to submit further submissions as may be required.*

24.2 Details of tariff items proposed by BIAL as per its rate card are as follows.

**Table 125: Tariff Items proposed by BIAL in its tariff card**

Tariff Item	Single Till	Dual Till	Whether common in Single Till and Dual Till
Landing, Parking and Housing Charge	Increased rates proposed	Increased rates proposed	Yes
Common Infrastructure Charges	New Levy of Rs. 50 per embarking pax, constant through the control period	-	No
User Development Fee – International	Rs. 1700/- for 2013-14, to be increased by 6% per annum	Rs. 1700/- for 2013-14, to be increased by 6% per annum	Yes
User Development Fee – Domestic	Balancing Amount between the revenue requirement and other collections proposed to be collected from departing passengers	Balancing Amount between the revenue requirement and other collections proposed to be collected from departing passengers	No

24.3 As per the methodology detailed in Table 125 above, UDF rates proposed by BIAL under Single and Dual Till are as given below

**Table 126: UDF proposed for FY 2013-14 to FY 2015-16 for domestic passengers by BIAL**

Type of Passenger	Existing UDF Rates	Proposed UDF Rates by BIAL under Single & Dual Till					
		2013-14*		2014-15		2015-16	
		Single	Dual	Single	Dual	Single	Dual
Domestic (Rs.)	231.4	783.09	1729.43	742.07	1634.52	740.82	1667.54
International (Rs.)	952.3	1700	1700	1802	1802	1910.12	1910.12

\* Proposed UDF levy by BIAL is w.e.f. 1st May, 2013

### (b) Authority's Examination of BIAL's Submissions on Tariff Structure/ Rate Card

24.4 The Authority has carefully considered the tariff card submitted by BIAL. As would be seen from Table 125, except UDF and the Common Infrastructure Charges (CIC) the other tariff items are the same both for Single Till and Dual Till. The Authority has noted that BIAL have in the ATP stated that:

*".....the UDF is a fee charged by the airport to develop world class facilities UDF would apply only from/after the date of operation of the new airport, and would enable BIAL to make the project viable."*

24.5 The charges directly impinging on the passengers are (a) Development Fee, sometimes also called the Airport Development Fee (b) User Development Fee (c) Passenger Service Fee, particularly, the facilitation component thereon and in case of BIAL, (d) the proposed (new) charge of "Common Infrastructure Charge" (CIC). The Development Fee is regarded as the pre-financing Capital receipt. According to Section 22A of the AAI Act, the Development Fee is not applicable in respect of Bengaluru International Airport as developed by BIAL. The User Development Fee, on the other hand is a revenue enhancing mechanism to bridge any revenue shortfall so that the Airport Operator is able to get the fair rate of return (that includes Fair Rate of return on Equity). Hence, the nature and character of Development Fund (DF) / Airport Development Fund (ADF) and User Development Fee (UDF) are distinct and different. The Authority is however aware that as per the Concession Agreement, UDF will be used for "the development, management, maintenance, operation and expansion of the facilities at the airport." The facilitation component of PSF is proposed to be merged into UDF so that the PSF gets restricted to only the Security component. The CIC is a new charge on passengers proposed by BIAL.

24.6 As regards the Passenger Service Fee (Facilitation Component) [PSF(FC)] presently Rs. 70/- per embarking passenger, BIAL have submitted that there is no increase proposed and existing levy of PSF(FC) is to be discontinued w.e.f. 1<sup>st</sup> May, 2013 and merged with proposed UDF levy w.e.f. 1<sup>st</sup> May, 2013.

24.7 It is seen from the Table 126 that BIAL has proposed the domestic UDF under Single Till to be 339% of the existing rates and the International UDF to be 179% of the existing rates (w.e.f 1<sup>st</sup> May 2013). In Dual Till, these percentages are 748% and 179% respectively. The Authority has noted from the Table 125 that BIAL has proposed to levy UDF on departing passengers. Further, the UDF proposed for departing **International** passengers is the same under Single and Dual Till for each of the Tariff Years 2013-14, 2014-15 and 2015-16.

24.8 The Authority notes that the ATP submitted by BIAL is corresponding to the Yield Per Passenger of Rs. 454.81 under Single Till and Rs. 635.55 under Dual Till. BIAL have in their ATP submission also stated that BIAL reserves the right to submit further submissions as may be required.

24.9 The Authority also notes that Fuel Throughput charges collected by it have not been submitted in ATP for tariff determination. The Authority also notes that these charges were included as part of Non-Aeronautical revenue projections under Aviation Concessions, which the Authority proposes to determine as Aeronautical Tariffs.

24.10 The Authority notes that BIAL has proposed a levy of Rs. 50 per departing passenger to be collected as part of Aeronautical tariff under Single Till. This charge has however not been proposed by BIAL under Dual Till. The Authority proposes not to consider a separate CIC charge of Rs. 50 per departing passenger under Single Till and merge the same along with the UDF.

24.11 The Authority also notes that BIAL has adopted a % applicability for levying landing charges on Domestic Pax flights and on UDF on International passengers. No explanation/ details have been furnished by BIAL for the same. Also, the Authority notes that BIAL has provided for Discounts on Landing charges for Domestic Pax flights and Domestic Cargo Flights. However, BIAL has not submitted any details on the same at the time of submission of its Annual Tariff Proposals. Also, the Authority's position on discounts has been clearly elaborated in its Airport Order. Hence the Authority proposes to work out the tariff card without considering any discounts and any % reduction to the % applicable, as computed by the Airport Operator.

24.12 The Authority also notes that BIAL has proposed a minimum charge of Rs. 5000/- for landing of all Aircrafts. The Authority notes that there is a circular of MoCA that no charges may be levied for aircrafts below 80 seats. Hence the Authority proposes not to consider a charge for ATRs. If there is a change in MoCA's instruction in this regard, the Authority is open to considering a charge for ATRs.

24.13 The Authority, on account of its various proposals in respect of respective building blocks, has determined the Yield Per Passenger at Rs. 351.94 under Single Till and at Rs. 402.94 under Dual Till (See Para 23.2 above).

24.14 In order to assess the impact of this Yield Per Passenger on the passenger charges in terms

of UDF, the Authority has considered the aeronautical revenue under the other heads namely, Landing, Parking charges and Housing Charges the same as proposed by BIAL. Thus the only variable item in the tariff card is UDF and impact of any change in the YPP is thus reflected in the UDF.

24.15 The Authority notes that the ARR for respective years of the current control period has been worked out in Table 123 under Single Till and Table 124 under Dual Till. The Authority has considered the revenue from Landing and Parking charges, Housing Charges from the ATP submitted by BIAL and consider the existing Fuel Throughput charge of Rs. 1067 as accounted by BIAL. In computing the revised UDF numbers, the Authority has reworked the UDF – International and UDF- Domestic rates to remain in the existing proportion at 4:1. Accordingly the UDF numbers for respective years have been worked out as below

**Table 127: Summary of Recomputed UDF (Domestic) based on Authority's proposals, keeping charges other than UDF and CIC as per BIAL's tariff proposal**

Type of Passenger	Existing UDF Rates	Proposed UDF Rates by BIAL under Single & Dual Till					
		2013-14*		2014-15		2015-16	
		Single	Dual	Single	Dual	Single	Dual
Domestic (Rs.)	231.4	248.73	367.74	267.85	382.01	280.75	399.27
International (Rs.)	952.3	994.91	1470.95	1071.42	1528.04	1122.99	1597.09
* Proposed UDF levy by BIAL is w.e.f. 01st May, 2013. The Authority would round off the above numbers to the nearest rupee.							

24.16 Table 127 is based on the **CGF Service providers being treated as third party concessionaires** (ISPs and not agents of BIAL). BIAL, in its Appeal number 12/2011 before AERAAT had taken a stand that the CGF service providers are agents of BIAL. The Authority has alternatively calculated the Aeronautical Tariffs taking into account this submission of BIAL in Para 25 below.

24.17 The Authority has considered **different scenarios both under Single Till and Dual Till** in its computation of ARR and based on which yield per passenger, effective implementation of new aeronautical tariffs as well as UDF. The Authority notes that BIAL's annual tariff proposals are based on the effective date of implementation on 01.05.2013. The Authority recognizes that it is not possible to adhere to this date. The Authority, therefore, has also calculated the UDF based on the effective date tentatively being 1<sup>st</sup> October 2013 (taking into account reasonable time for effective stakeholders' consultation, as well as Authority's analysis of the issues that may be raised.)

24.18 Accordingly the UDF depicted in Table 127 recomputed, for tariff revision to commence from 1<sup>st</sup> October 2013 are as follows.

**Table 128: Summary of Recomputed UDF (Domestic) based on Authority's proposals, keeping charges other than UDF and CIC as per BIAL's tariff proposal (w.e.f 1st October 2013)**

Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single & Dual Till as per Authority*					
		2013-14		2014-15		2015-16	
		Single	Dual	Single	Dual	Single	Dual
Domestic (Rs.)	231.4	262.32	399.28	281.37	412.68	294.17	429.74
International (Rs.)	952.3	1049.27	1597.14	1125.48	1650.73	1176.69	1718.95

\* Proposed UDF levy is w.e.f. 01st October, 2013. The Authority would round off the above numbers to the nearest rupee.

**Proposal No 17. Regarding Tariff Structure/ Rate Card**

**17.a. Based on the material before it and its analysis, the Authority proposes:**

- i. To consider the multi-year ATP(s) for FY 2013-14, 2014-15 and 2015-16 submitted by BIAL for Bengaluru International Airport, Bangalore at the MYTP stage itself.
- ii. To consider levy of UDF only on departing passengers (both domestic and international) and to note that UDF is different under Single Till and Dual Till.
- iii. To note the determination of UDF under Single Till and Dual Till as indicated in Table 128 (effective from 1<sup>st</sup> October 2013) based on the calculation of ARR and YPP (under Single Till and Dual Till) as indicated in Table 123 and Table 124 respectively.
- iv. To note that based on different Means of Finance for expansion (Para 28.18 below, Proposal No 21 below as well as Para 4.21 above) as may be proposed by BIAL the Authority would determine the UDF for domestic and international departing passengers.
- v. To merge the CIC Charge proposed by BIAL under Single Till into the UDF. (BIAL has not proposed any CIC charge under Dual Till)
- vi. To determine the other charges in the tariff card, namely, Landing and Parking charges, and Fuel Throughput Charges, as proposed by BIAL, noting that BIAL has proposed same charges under both Single Till and Dual Till

## **25 Analysis of Service Providers of CGF as Agents of BIAL (under Single and Dual Till)**

25.1 As indicated in Para 18.60 above, BIAL in its affidavit before AERAAT has stated that the service providers giving CGF services (these services are defined as Aeronautical Services under AERA Act) are merely the agents of BIAL. The Authority in its counter affidavit before AERAAT had stated that the Authority considers the CGF service providers as third party concessionaires (ISPs and not agents of BIAL). When this appeal was heard before AERAAT on 3<sup>rd</sup> May 2013, Shri Datar, Senior Advocate sought to withdraw the appeal. AERAAT in its Order dated 3<sup>rd</sup> May 2013 amended vide its Order dated 10<sup>th</sup> May 2013, allowed the appellant to withdraw the appeal. In its order, it also permitted the appellant, inter alia, *“an opportunity to raise all the questions raised herein in his appeal for filing which, he seeks an opportunity. We allow the withdrawal with the liberty sought for by him”*.

25.2 BIAL had, in its Appeal no 12/2011 referred to in 25.1 above, raised the question of the nature of the CGF Service Providers averring that they are its agents. Accordingly, the Authority has also analysed the implication of treating Service Providers of CGF as Agents of BIAL in Table 129. Since the Authority had reckoned the Service Providers of CGF as Third Part Concessionaires (ISP), it had treated the revenues obtained by BIAL from them as Non-Aeronautical Revenue. Under Single Till, these revenues were therefore taken into account in calculating aeronautical tariffs (and UDF). The entire expenditure incurred by BIAL attributable to provision of CGF services including costs (including depreciation and interest) were also included in the allowable expenditure for the purpose of calculation of aeronautical tariffs under Single Till. The yield per passenger in such calculations (with CGF service providers as third party concessionaires and not agents of BIAL) of the Authority worked out to Rs. 351.94 as calculated in Table 123 and the corresponding revised UDF detailed in Table 127. Under Dual Till, these revenues were not taken into account in calculating aeronautical tariffs (and UDF), as they were considered as part of Non-Aeronautical revenue (except for Fuel Throughput charges). The yield per passenger in such calculations (with CGF service providers as third party concessionaires and not agents of BIAL) of the Authority worked out to Rs. 402.94402.94 as calculated in Table 124 and the corresponding revised UDF detailed in Table 127.

25.3 BIAL in its Appeal No. 12/2011 had however averred that the CGF Service providers are its Agents. If as stated by BIAL, the CGF service providers are its Agents, then it would mean that the CGF services are provided by BIAL through its appointed Agents. In such a situation BIAL (and not the CGF Service Providers) becomes the Service Provider of the aeronautical services of CGF and consequently BIAL becomes a regulated entity under AERA Act also in respect of these services. Hence the entire Turnover of the Agents would need to be treated as aeronautical revenue from the respective aeronautical services in the hands of BIAL i.e., the Principal – both under Single Till as well



as Dual Till.

25.4 The Authority based upon the contentions made by M/s BIAL in its appeal affidavit before AERAAT has analysed the aeronautical tariff determination taking the Cargo, Ground Handling and Fuel Supply (CGF) service providers as agents of BIAL and not Independent Service Providers (ISPs). While examining the various submissions made by BIAL, the Authority had noticed the amounts BIAL had received from service providers like Cargo and Fuel Supply (that are defined as Aeronautical services in AERA Act) that it had treated as Non Aeronautical Revenue. The Authority noted that if as claimed by BIAL before AERAAT, the Service providers are its agents, all the revenues arising out of these services would need to be reckoned as obtained by BIAL in the course of providing Aeronautical services of Cargo and Fuel supply (through agents). However, in case of Ground Handling service (which also is defined as an aeronautical service in the AERA Act) the Authority noted that BIAL had not projected any revenue share from the Ground handling service provider.

25.5 The Authority vide its letter dated 20<sup>th</sup> March 2013 made a specific query to BIAL: “Further, attention is drawn to your response vide e-mail dated 26.02.2013 indicating that BIAL is getting only rental from ground handling activities thus tantamounting to mean that the Ground Handling service providers at Bangalore International Airport, i.e. M/s Air India SATS and M/s Globe Ground India **are not your agents**. Kindly confirm the same”. BIAL replied vide email dated 3<sup>rd</sup> June 2013 that “Please note that we are receiving only rentals from Ground Handling Service Providers and kindly refer concessionaire agreement copy provided, as part of MYTP submission, for further needful review at your end”. The Authority took note of the submissions by the Ground Handling Service providers regarding their total revenues.

25.6 The Authority however has also perused the agreements between the Cargo Service provider with BIAL. As far as the relationship between the Cargo Service provider and BIAL is concerned, the Authority finds that as per the agreement,

*The SPRH<sup>11</sup> agrees and confirms that in exercising the Service provider rights and observing and performing its obligations and liabilities hereunder it will be acting as an independent contractor for its own account and will not be acting as or deemed in any respect to be the agent or partner of BIAL. (Clause 3.2.3 of BIAL-SPRH Agreement)*

25.7 The Authority notes that upon a specific query as stated in Para 25.5 above, BIAL’s reply dated 3<sup>rd</sup> June 2013 skirts the issue, is ambiguous and also omits what was specifically averred by it in its judicial proceedings before the AERAAT. BIAL’s reply is thus not in consonance with its stand regarding the status of the CGF Service Providers as taken by it before AERAAT (that the CGF Service Providers are agents of BIAL).

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<sup>11</sup> SPRH means Service Provider Right Holder (defined in both Concession Agreement as well as the BIAL-SPRH agreement)

25.8 For the purposes of the Consultation Paper therefore, the Authority has also calculated ARR etc. under both the scenarios viz. (a) taking CGF service providers as agents of BIAL in consonance with the stand of BIAL before the AERAAT in its Appeal No. 12/2011 and (b) taking CGF Service providers not as agents of BIAL but as third party concessionaires (ISPs). As indicated in Para 25.1 above, AERAAT, after considering the prayers of the Senior Advocate, Shri Datar had ordered that he would be given “an opportunity to raise all the questions raised herein in his appeal for filing which, he seeks an opportunity. We allow the withdrawal with the liberty sought for by him”. Calculation of the Aeronautical tariffs treating the CGF Service Providers as agents of BIAL would also be relevant if in a subsequent appeal, BIAL were to take a similar plea that the CGF Service Providers are its agents and not Third Party Concessionaires (ISPs).

25.9 As can be seen below, treatment of CGF service providers as agents of BIAL or third party concessionaires (Independent Service Providers) has significant impact on aeronautical tariffs and especially on User Development Fee (UDF). The recomputed ARR to be recovered through Aeronautical tariff after adjusting the revenues from agents, under Single Till and Dual Till are as detailed below

**Table 129: Recomputed total amount to be recovered through Aeronautical tariffs after adjusting Revenues accruing to BIAL considering CGF Service providers as Agents**

Particulars (Rs. Crore)	Single Till		Dual Till	
Aggregate Revenue requirement as computed in Table 123 and Table 124		2,817.41		3,198.28
Computation of Revenues from CGF				
Total Revenue of CGF Agents for the control period	1,768.85		1,768.85	
Revenue considered as part of the ARR (Fuel Farm and Cargo Service)	380.97		231.38	
Additional Revenues (from CGF)	1,387.88		1,537.47	
Tax on additional revenue at 20% (MAT)	(277.58)		(307.49)	
Balance amount with Operator	1,110.30		1,229.98	
Hence amount available towards ARR		(1,110.30)		(1,229.98)
Recomputed Aggregate Revenue requirement to be met through other Aeronautical tariff (LPH, UDF, FTC)		1,707.11		1,968.31

25.10 The Authority has given its computation of calculation of aeronautical charges and UDF (average, per Domestic Depax and per International Depax) in Table 128 considering the CGF Service Providers as Third Party Concessionaire (ISP and not as Agents of BIAL) and considering that the shareholders of BIAL would be able to infuse the necessary additional equity into the Project.

25.11 Financial implications of these considerations on the Aeronautical tariff have been recomputed by the Authority based on the balance ARR required to be met through Aeronautical tariffs of LPH, FTC, CIC as well as UDF. The Authority has computed the UDF considering (a) no change in LPH charge as compared to the existing rates and (b) FTC maintained at the current level of Rs. 1067/- per KL for the balance control period (c) not to charge CIC that is proposed as a new charge by BIAL and (d) keep UDF at Zero both for Domestic and International departing passengers for the year 2013-14 and thereafter increasing as per Table 130. The Authority however states that in its reply to BIAL's appeal No. 12/2011 (in which BIAL had averred that the Service providers of CGF are its agents), the Authority had submitted before AERAAT that it does not regard Service providers of CGF as agents of BIAL. The Authority has computed the financial implications in Table 130 in line with the averments made by BIAL as well as the Order of AERAAT permitting BIAL to withdraw the appeal with an opportunity to raise all the questions raised and BIAL's submission dated 14<sup>th</sup> September 2011. The Authority is therefore presenting the calculations treating the CGF service providers as agents of BIAL (and not Third Party concessionaires, ISPs) in Table 130.

**Table 130: Summary of Recomputed UDF (Domestic) based on Authority's proposals, considering CGF Service providers as agents of BIAL**

Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single & Dual Till as per Authority*					
		2013-14		2014-15		2015-16	
		Single	Dual	Single	Dual	Single	Dual
Domestic (Rs.)	231.4	0.0	126.70	40.56	104.93	106.56	178.41
International (Rs.)	952.3	0.0	506.80	162.23	419.70	426.26	713.63
* Proposed UDF levy is w.e.f. 01st October, 2013. The Authority would round off the above numbers to the nearest rupee.							
Landing, Parking Rates are as per the existing rates							
* Under Single Till In the first year UDF will be Zero and the LPH Charges will be reduced by 14.59%							

**Proposal No 18. Regarding alternate analysis of UDF considering CGF service provider as Agents of BIAL (and not as ISPs)**

**18.a. Based on the material before it and its analysis, the Authority proposes:**

**i. To put forth the following proposals for Stakeholders consultation:**

- 1. Determination of Aeronautical tariffs (as well as UDF) considering the CGF Service providers as third party concessionaires (ISP, and not agents of BIAL). In this proposal,**

**the Aeronautical Tariffs (as well as UDF) would be as per Table 128 both under Single Till and Dual Till. Alternatively,**

- 2. Determination of Aeronautical tariffs (as well as UDF) considering the CGF Service providers as Agents of BIAL (and not as third party concessionaires). In this proposal, the Aeronautical Tariffs (as well as UDF) would be as per Table 130 both under Single Till and Dual Till.**
- ii. Based on the Stakeholders' consultations, the Authority would determine the Aeronautical tariffs appropriately.**

## 26 BIAL's submission on Regulatory Approach and Till and Authority's views

### (a) BIAL's submission on Till and related matters

26.1 BIAL has, in its additional submissions made regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11 stated as below:

*"We at BIAL welcome the submission made on behalf of the Authority since this provides a window of opportunity to BIAL to convey its concerns, apprehensions and difficulties with respect to Order No.13/2010-11, Order No.14/2010-11 and Direction No.5/2010-11. As stated above, BIAL has already submitted a response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL has also, through the appeals filed in Appeal No.2/2011 and Appeal No.7/2011 conveyed its principal concerns. To avoid repetition, BIAL requests that its concerns set out in its response dated March 19, 2010 and Appeal Nos. 2 and 7 of 2011 be considered as a part of this document. Although most of BIAL's concerns have been highlighted in the above referred documents, at the cost of repetition, BIAL wishes to set out below its principal observations, concerns and submissions for the kind consideration of the Authority.*

*5. In order to place BIAL's observations and submissions in an appropriate context, we are briefly recapitulating the legal framework in which, BIAL was provided multiple concessions to build, operate and transfer a Greenfield Airport at Bangalore:*

*(i) The Airports Infrastructure Policy, 1997 recognized:*

*and stressed the need for private investment and management capacities;*

*the need to provide a market orientation to the existing structure in order to encourage greater efficiency and enterprise in the operation of airports, through introduction of private capital and management skills;*

*that revenue from non-aeronautical services is an important component of airport development especially in order to make airports not only viable but also capable of generating surpluses for further expansion and development;*

*that except for user development fees, there will be total freedom for airport operators in the matter of raising revenue through non-aeronautical revenue and there will not be any government control over the same;*

*revenue from non-aeronautical sources as an internal resource for financing of airport infrastructure;*

*that considering the quantum of investment required and considering the fact that public funds are scarce, private sector involvement is a necessity;*

*that private sector participation would inter alia bring in efficiency in management of airports; and*

*that the role of the central and state governments would, among other things, include approval of aeronautical charges. A similar provision with respect to non-aeronautical charges was however absent.*

*Thus, the policy provided a revolutionary thrust towards induction of private capital and private management of airports. It is our view that the thrust on privatization essentially translates to a reduction in control or regulation of the airport business. Privatization indisputably indicates a paradigm shift away from the license raj, both in letter and spirit, and recognizes the importance of private enterprise and entrepreneurship. In this backdrop, it is our view that, in order for private capital and management skills to be employed optimally, regulation can be minimal to give effect to the policy of the State and to ensure provision of appropriate services by the airport operator. Apart to such oversight, the overarching approach must be towards recognizing maximum freedom to the airport operator, in carrying on its activities both aeronautical and non-aeronautical.*

*(ii) The Airports Authority of India Act, 1994: The 2003 amendments to the Airports Authority of India Act, 1994 strengthened investors' confidence and provided a further legal framework for privatization of airports. It is also pertinent that the statement of objects and reasons for the 2003 amendments specifically refers to the requirement to improve the standard of services and facilities at the airports to bring them at par with international standards, and for the infusion of private sector investment for this purpose. The statement of objects and reasons further specifically states that significant private sector investments in such a project require an effective legal framework within which the investors would feel safe and secure about operational and managerial independence.*

*(iii) In line with the Airports Infrastructure Policy, 1997 and the amendments to the Airports Authority of India Act, 1994 and to attract investment in a sunrise sector, the Central and the State Government offered multiple concessions and initiated a global competitive bidding process for development of an international airport at Bangalore. It is in this backdrop that BIAL was selected to build, operate and transfer the Bengaluru International Airport at Bangalore.*

*(iv) A Concession Agreement dated July 05, 2004 ("Concession Agreement") was executed between the Ministry of Civil Aviation / Central Government and BIAL. Thereafter, the State Support Agreement dated January 20, 2005 ("State Support Agreement") was executed between the State of Karnataka and BIAL; and the Land Lease Deed ("Land Lease Deed") dated April 30, 2005 was executed between KSIIDC and BIAL.*

6. *Bangalore International Airport was the first private Greenfield airport which was developed in the new legal framework ushered in by the Airports Infrastructure Policy, 1997 and the amendments effected by the Airports Authority of India (Amendment) Act, 2003. BIAL faced myriad challenges and risks, both legal and otherwise, since it was a prime mover. Amidst multiple uncertainties, commitments were made by the shareholders of BIAL to develop a world class airport in Bangalore. It is only fair that the promises made and the framework, in which investments and commitments were made, be respected and adhered to.*

7. *Order Nos.13 and 14 and Direction No.5 (collectively referred as “tariff orders”), in their current form, have the effect of severely eroding benefits that had been given and/or promised to BIAL. The tariff orders undermine the assurances on the basis of which, investments were made into the Bengaluru International Airport (“BIA”).*

*In fact, certain observations in the tariff orders may have the effect of rewriting the basis on which, investments were made into BIAL. Additionally, certain regulatory mechanisms proposed in the tariff orders are not in tandem with extant international practices and standards. Some such mechanisms may also not be in line with the regulatory framework contemplated under the Airports Economic Regulatory Authority of India, 2008 (“Act”). It is BIAL’s endeavour to point out such portions of the tariff orders and seek appropriate modifications thereto.*

*The statement of objects and reasons to the AERA Act envisage:*

*Creation of level playing field for airports;*

*Encouragement of investment in airport facilities;*

*Regulation of tariffs of aeronautical services;*

*Protection of reasonable interests of users;*

*Operation of efficient, economic and viable airports.*

*The statement of objects and reasons provide a roadmap and set out the regulatory objectives.*

*The Airports Infrastructure Policy of 1997, the amendments to the Airports Authority of India Act, and the AERA Act, have to be considered conjointly to decipher the intent and ambit of regulation.*

*A conjoint consideration of all these fundamental documents clearly reveals the mandate to foster privatization of airports in letter and spirit and keep regulatory intervention to an absolute minimum.*

*STATE CONCESSIONS (GOI AND GOK)*

8. *The Ministry of Civil Aviation/ Central Government provided a concession to BIAL to develop a Greenfield airport in Bangalore in exercise of its executive power. This executive power has been exercised by the Central Government under Entry 29, List I of the VII Schedule of the Constitution. There is no provision whatsoever in the AERA Act which undermines the Concession Agreement. On the contrary, Section 13(1)(a)(vi) expressly provides for a consideration of State concessions. Also, the AERA Act does not deal with rights and liabilities of the airport operator and only provides for a mechanism of tariff determination. In that sense, the AERA Act is a procedural legislation and not a substantive legislation. A procedural legislation cannot take away vested rights of the parties subject to such legislation.*

9. *Additionally, in the course of the proceedings before the Hon'ble Appellate Tribunal in Appeal No.7, an affidavit dated July 18, 2011 was filed on behalf of the Ministry of Civil Aviation/Central Government. In the affidavit, the Central Government has opined that the Concession Agreement, containing the philosophy for economic regulation of aeronautical tariffs of the airports, has been approved at the highest level at the Government and has been providing the guiding principles to the Government in determination of aeronautical tariffs. It can be safely concluded from the above that the Central Government is in favour of a full and effective implementation of the concessions provided in the concession agreements executed between airport operators and the State for the purposes of determination of tariffs for aeronautical services. In fact, the statement on behalf of the Central Government, in the affidavit, denotes that the terms and conditions of the Concession Agreement are indicative of policy. As stated above, under Section 42 of the AERA Act, the Authority is bound by the policy directives of the Central Government. In summation, the AERA Act as well as the policy directives of the Central Government prescribe that the State concessions to the airport operator be given full effect to.*

#### **APPROPRIATE REGULATORY TILL**

10. *In Order No.13, the Authority has indicated that it will adopt "Single Till" regulatory regime for major airports in India. Order No.14 and Direction No.5 prescribe adoption of "Single Till". The Authority has come to this conclusion on the basis of reasons, which in our humble view, do not conform to the correct factual and/or legal position. The Authority's principal reasons for adoption of "Single Till" and our responses thereto are below:*

*(i) **Position under the AERA Act:** The Authority relies on certain observations made in the 133rd Parliamentary Standing Committee Report. It is our humble view that the*



*Authority's reliance on the Standing Committee Report is misplaced in law. A Parliamentary Committee Report on a bill cannot be a tool for interpretation of a subsequently enacted statute. The reliance on such report is not legally apposite. At any event, the extracts from the report, which form a part of Order No.13 at paragraph 5.136, indicate discussions with respect to tariff determination or regulation of tariffs for non-aeronautical services as against inclusion of revenue from non-aeronautical services, either completely, or in part, or not at all for determination of tariffs of aeronautical services. The Parliamentary Committee did not deliberate on or recommend any modifications to the bill with respect to inclusion of revenue received from non-aeronautical services for determination of tariffs from aeronautical services. In this light, the Authority cannot rely on the report to decipher the true meaning of Section 13(1)(a)(v) of the AERA Act.*

*In our view, the Authority need to have, in the first instance, considered the very words employed in Section 13(1)(a)(v) to cull out the true import of Section 13(1)(a)(v). Section 13(1)(a)(v) provides for consideration of revenue received from services other than aeronautical services. The provision does not indicate that **all** revenue must be included. Additionally, the proviso to Section 13(1)(a) indicates that any or all of the considerations specified in Section 13(1)(a) (i) to (vii) can be considered for determining different tariff structures for different airports. These two features visibly indicate that the AERA Act does not mandate a Single Till approach. Instead, the AERA Act provides the leeway to the Authority to apply appropriate mode of regulation, keeping in mind the factors prescribed in Section 13(1)(a)(i) to (vi). In the case of BIAL, in view of Section 13(1)(a)(vi), in accordance with the Concession Agreement, BIAL should not be governed under a Single Till regulation .*

*The Authority, in the final tariff determination orders issued in respect of Mumbai airport and Delhi airport, has applied the shared till mechanism for determination of tariffs. Had Single Till been mandated by the AERA Act, a shared till mechanism could not have been applied in the case of Mumbai and Delhi airports. If that be so, the Authority's conclusion at clause 5.136 of Order No.13 that "...legislature did not contemplate regulation under a hybrid till." runs contrary to its subsequent orders.*

*The conclusion of the Authority that dual and hybrid till are not contemplated under the AERA Act runs contrary to the provisions of the AERA Act as well as the subsequent orders passed by the Authority.*

*(ii) **ICAO recommends Single Till:** This conclusion does not reflect the true or correct position adopted by ICAO. ICAO has not recommended any form of economic oversight*

over another. This is also the stated position of ICAO, which is apparent from some of the extracts of ICAO documents, which are reproduced below.

### **Convention on International Civil Aviation**

The basic policy established by ICAO in the area of the charges for Airport and Air Navigation Services is expressed in Article 15 of the Convention on International Civil Aviation (Doc. 7300), usually referred to as the Chicago Convention, as follows:

#### **Airport and similar charges**

*“Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every Contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.*

*Any charges that may be imposed or permitted to be imposed by a Contracting State for the use of such airports and air navigation facilities by the aircraft of any other Contracting State shall not be higher.*

- a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and*
- b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.*

*All such charges shall be published and communicated to the International Civil Aviation Organization, provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.”*

*In summary, Article 15 sets out the following three basic principles:*

*Uniform conditions shall apply to the use of airports and air navigation services in a Contracting State by aircraft of all other Contracting States;*

- ☐ The charges imposed by a Contracting State for the use of such airports or air navigation services shall not be higher for aircraft of other Contracting States than those paid by its national aircraft engaged in similar international operations; and*

☐ *No charge shall be imposed by any Contracting State solely for the right of transit over or entry into or exit from its territory of any aircraft of a Contracting State or persons or property thereon.*

### **ICAO's Policies on Charges for Airports**

*Additional and more detailed policy guidance is provided in ICAO's Policies on Charges for Airports and Air Navigation Services (Doc 9082). These are revised periodically by the Council following major international conferences on airport and air navigation services economics although most of the basic philosophy and principles have remained unchanged over the years. An introduction section of Doc 9082 addresses some issues which are common to airports and air navigation services: scope and proliferation of charges, organizational and managerial issues and other factors affecting the economic situation of airports and air navigation services.*

*ICAO's Policies on Charges differ in status from the Chicago Convention in that an ICAO Contracting State is not legally bound to adhere thereto, unlike the Articles of the Chicago Convention. However, since the principles in the ICAO's Policies, including on charges, are based on recommendations by major international conferences, States are morally committed to follow them and to ensure that their cost recovery practices conform thereto.*

*The principles contained in Section II - ICAO's Policies on Airport Charges- Doc 9082/6 cover such subjects as the cost basis for airport charges, airport charging systems, pre-funding of projects; currency issues, landing charges, parking and hangar charges, passenger service charges, security charges, noise-related charges, consultation with users, development of revenues from concessions, rental of premises and "free zones", and fuel concession fees.*

*Among the basic principles included in ICAO's Policies on Charges concerning the cost basis for airport charges are:*

- that where an airport is provided for international use, the users ultimately bear their full and fair share of the cost of providing the airport (**paragraph 21**);*
- that the cost to be shared be the full cost of providing the airport and its essential ancillary services, including appropriate amounts for cost of capital and depreciation of assets, as well as the cost of maintenance and operation and management and administration expenses, but allowing for all aeronautical revenues plus contributions from non-aeronautical revenues accruing from the operation of the airport to its operators (**paragraph 22 i**);*

*Airports may produce sufficient revenues to exceed all direct and indirect operating costs (including general administration, etc.) and so provide for a reasonable return on assets at a sufficient level to secure financing on favourable terms in capital markets for the purpose of investing in new or expanded airport infrastructure and, where relevant, to remunerate adequately holders of airport equity. (paragraph 22 vii);*

*ICAO's Policies on Charges also actively encourage the full development of revenues from non- aeronautical activities in general (paragraph 34).*

*Other principles and recommendations of particular relevance in the context of the cost basis for airport charges and charging systems are:*

*- airports should maintain accounts that provide a satisfactory basis for determining and allocating the costs to be recovered, and should provide adequate financial information to the users (paragraph 21);*

*- that the proportion of costs allocable to the various categories of airport users should be determined on an equitable basis, so that no users shall be burdened with costs not properly allocable to them according to sound accounting principles (paragraph 22 v);*

*- that airports may produce sufficient revenues to exceed all direct and indirect operating costs and so provide for a reasonable return on assets at a sufficient level to secure financing on favourable terms in capital markets for the purpose of investing in new or expanded airport infrastructure and, where relevant, to remunerate adequately holders of airport equity (paragraph 22 vii);*

*- that charges should not be imposed in such a way as to discourage the use of facilities and services necessary for safety (paragraph 23 ii) and*

*- The council considers that as a general principle it is desirable, where an airport is provided for international use, that user shall ultimately bear their full and fair share of the cost of providing the airport (paragraph 29).*

*Further,*

*1) ICAO lays emphasis on four key charging principles of non-discrimination, cost-relatedness, transparency and consultation with the users.*

*2) ICAO does not propagate that airports have to adopt Single Till, though it suggests that contribution from non-aeronautical revenues accruing from the operation of the airport to its operators may be considered.*

*Mention of contribution from non-aeronautical revenues does in no way suggest Single Till, as it does not stipulate all contributions. Mention of contribution from non-aeronautical revenues itself indicates that separate accounts are being maintained for aeronautical and non-aeronautical revenue and expenses. In case of Single Till there is no*

*need to maintain separate expense account. Any inference about ICAO mandating Single Till is flawed.*

*It is important to point out that the previous editions of ICAO Doc 9082 provided for inclusion of **all** revenues from non-aeronautical services. Whereas, in the 6th edition, the language was modified to provide for inclusion of contributions from non-aeronautical revenues. This amendment reflects that ICAO does not recommend Single Till any longer.*

*The Authority has relied on a quotation by Prof. Dr. David Gillen in support of its conclusion that ICAO recommends Single Till. BIAL has had the opportunity of consulting David Gillen and had filed Dr. Gillen's expert affidavit dated January 12, 2012 in Appeal No.7/2011 in which he has opined as under:-*

*"56. ICAO's policy regarding airport charges and air navigation services are set out in ICAO document 9082/7. There is no statement whatsoever regarding single or Dual Till price cap regulation and which it prefers. There is a clear statement by ICAO that it considers that as a general principle it is desirable, where an airport is provided for international use, that the users shall ultimately bear their full and fair share of the cost of providing the airport. Specifically, at paragraph 22i under Airport Charges:*

*"The cost to be shared is the full cost of providing the airport and its essential ancillary services, including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration, but allowing for all aeronautical revenues plus contributions from non-aeronautical revenues accruing from the operation of the airport to its operators."*

*57. ICAO's latest document regarding charging policies (ICAO's Policies on Charges for Airport and Air Navigation Services, Document 9082, 8th Edition 2009) is completely silent on single versus Dual Till. In fact the word till does not appear in the document, nor do the expressions "Single Till" or "Dual Till". It is clear that ICAO has not taken an explicit position on single versus Dual Till.*

*58. This is instructive in interpreting the possible ICAO position on single versus Dual Till. First, note that the position of ICAO is that all costs, and no more or less, should be paid by users of airport services. Second, it states that "allowing for contributions" from non-aeronautical revenues accruing from airport operations. It does not say **all** non-aeronautical revenues should be passed on which is what Single Till regulation would do. Further, its statement that all costs be paid, has an implication of no subsidies, and is basically saying, do not charge less than costs, just as do not charge more than costs.*

*59. This position is supported by Odoni (2007) who notes that ICAO's position on charging for airport services should be cost based, that users should pay the full costs including*

repairs and management and interest and depreciation and no more and that airports may produce revenues greater than costs. ICAO is silent on what should happen to these revenues.

60. IATA not unsurprisingly since they represent only the interests of airlines has claimed that only Single Till should be used in price cap regulation and that ICAO supports this position. In an IATA submission regarding the need for economic regulation of Hong Kong International Airport in 2004, IATA simply listed paragraph 22i (listed above in paragraph 14) claiming this was proof of the ICAO position. I disagree for reasons stated above.

61. In a presentation to the Strategic Airport Management Program, April 13-17, 2007, an ICAO representative provides detailed explanations of airport pricing and specifically what constitutes single and Dual Till. There is no statement of the position ICAO takes on single versus Dual Till. In this same presentation the argument is made that half or more of airport services are subject to competition; this would constitute the bulk of revenue from non-aeronautical services. Given these services are in competitive markets it is the airport that generates these revenues not the airlines. It is the airport that invests resources to increase the spending of passengers not the airlines.

62. Gillen and Niemeier (2008) state "The Single Till principle was recommended by ICAO and has been widely used in Europe, but this long tradition is slowly breaking up." I also note that Airports Economic Authority of India in Order No.13/2010-22 quotes other papers I have written which contain this same quote. Some have taken this as a recommendation for support that ICAO has taken a position of single versus Dual Till. In ICAO Document 9082, which describes the basis for setting aeronautical charges, the first Edition was published in 1973. In this and four (4) subsequent editions, upto 1997, the phrase used in consideration of what revenues to include in setting aeronautical charges is "... but allowing for all revenues both aeronautical and non-aeronautical..." which would imply a Single Till, although ICAO never uses the term. However in the 6th Edition published in 2001, the phrase changes to be "The cost to be shared is the full cost of providing the airport and its essential ancillary services, including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration, but allowing for all aeronautical **revenues plus contributions from non-aeronautical revenues** accruing from the operation of the airport to its operators. The change in phrase is telling because it explicitly does not say all non-aeronautical revenue but says instead "contributions" from non-aeronautical revenues. My opinion is that ICAO recognized the growing importance of non-aeronautical revenues and they also recognized that the airport had shifted from being a

*public utility to being a modern business. It was simply unreasonable to shift all of the non-aeronautical revenue to subsidize aeronautical services. Prior to 2001, non-aeronautical revenue was a relatively small portion of total revenues, but with a number of airports this was no longer true. The Air Transport Research Society (ATRS), in their 2011 report based on 2009 data show non-aeronautical revenue ranging from; Europe 5% to 52% with a mean of 22%; Asia Pacific 5% to 58% with a mean of 27%; North America 7% to 46% with a mean of 21% all as a percentage of total revenue.*

*64. It is therefore my opinion that the conclusion reached by AERAI in Order 13 at paragraph 5.32 is incorrect. It quotes me from two papers at paragraph 5.27 and 5.28. The quote, as argued above, was based on the then existing statement in ICAO Document 9802 regarding the inclusion of all revenues. I was under a mistaken assumption and have since read carefully the texts of the relevant documents and researched the ICAO position further. Furthermore, the AERAI at paragraph 5.23 takes an overly broad interpretation to imply ICAO in Document 9082 had meant that all non-aeronautical revenue to be included in setting aeronautical charges. In fact, ICAO is explicit in its paragraph 7, which the AERAI quotes in 5.23, and AERAI chooses to ignore the fact ICAO says it may be appropriate for airports to retain non-aeronautical revenues.”*

*Moreover, in paragraph 10 of the affidavit dated July 18, 2011 filed by the Ministry of Civil Aviation/Central Government in Appeal No.7, the Central Government has opined that “neither Doc 9082 nor Doc 9562 specifies the extent to which the non-aeronautical revenues should be taken into account.”*

*The above makes it amply clear that ICAO does not recommend Single Till. The Authority’s principal premise for proposing a Single Till form of regulation is unfounded. BIAL therefore requests the Authority to reconsider its conclusion that ICAO recommends Single Till and consequently, further reconsider regulation under a Single Till mechanism.*

*(iii) POSITION AS PER CONCESSION AGREEMENT*

*Set out below are certain salient features of the Concession Agreement:*

*The commitment of the Ministry of Civil Aviation in clause 5.4.3 indicates the importance the Ministry attaches to the Concession Agreement and to the rights of BIAL under the Concession Agreement.*

*The Concession Agreement contemplates regulation of tariff for specified services. Such services are set out in Schedule 6 under the title “Regulated Charges” and are restricted to landing, housing and parking, passenger service fee and user development fee (domestic and international). BIAL is free to determine its own charges without any restriction in respect of all other services as per Article 10.3.*

*The Concession Agreement makes a distinction between airport activities and non-airport activities. Under the head of “airport activities” outlined in Schedule 3 of the Concession Agreement, BIAL is required to provide only infrastructure for non-aeronautical services such as post offices, conference centres, public telephones, restaurants and other refreshment facilities, within the terminal building. The actual provision of non-aeronautical services enumerated above is not regarded as an airport activity. To illustrate, managing or operating a restaurant is not an airport activity under the Concession Agreement, while providing a building to house such a restaurant is considered an airport activity.*

*Non-airport activities under the Concession Agreement include airport shuttle transport services, business parks, hotels, commercial buildings etc.*

*The Concession Agreement carves out a specified set of services that are within the scope of regulation which are termed as “Regulated Charges / Services”. All other services should be consequently not regulated by the Authority. Under the Single Till mechanism proposed by the Authority, although tariffs for non-aeronautical services are not fixed by the Authority, the profits that the airport operator may earn from such services are fixed. This is nothing but an indirect fixation of tariffs for non-aeronautical services. Thus, the non-fixation of tariffs for non-aeronautical services is only illusory and does not translate into any real or on the ground entrepreneurial freedom to the airport operator. As submitted in the response dated March 19, 2010, Appeal No.2 and Appeal No.7, the proposed Single Till regulation effectively determines tariffs even for non-aeronautical services, which is clearly impermissible under the AERA Act and was never contemplated under the Concession Agreement, the legal and factual framework within which significant investments were made by BIAL and its shareholders to establish the Bengaluru International Airport.*

*In the proposed regulations, the Authority has further not considered the concessions offered to BIAL in the form of the State Support Agreement and the Land Lease Deed. In the detailed project report which was shared with the bidders at several points of time during the course of the bidding, it was understood and conveyed that aeronautical and non-aeronautical services would be treated as distinct sources of revenue. In securing financial closure of the project, the consortium which emerged as the successful bidder for the Bengaluru International Airport created a financial model which operated on the understanding that aeronautical and non-aeronautical sources of revenues would be treated distinctly. The State of Karnataka acknowledged the financial models specifically and used it for the purpose of calculation of the viability gap in the form of state support.*



*Thus, the State of Karnataka invested into BIAL as a 13% shareholder and also provided viability gap funding of Rs. 350 crore on the basis of the understanding that aeronautical and non-aeronautical revenues would be treated distinctly.*

*BIAL was granted state support to the tune of Rs.350 crore as per clause 3 of the State Support Agreement to render the airport project viable. The State Support Agreement further acknowledges that the State of Karnataka agreed to provide financial support to improve the viability of the project and enhance bankability of the initial phase and agreed to procure KSIIDC i.e., Karnataka State Industrial Investment and Development Corporation Limited to execute the Land Lease Deed. Under the State Support Agreement, BIAL is entitled to commercially develop real estate projects, construction of hotels, restaurants, business centres, etc. for generation of revenue. The Land Lease Deed was executed in furtherance of the State Support Agreement and even under the Land Lease Deed; BIAL's rights to undertake non-airport activities such as construction of business parks, hotels, etc are recognized.*

*Under the State Support Agreement as well as the Concession Agreement, upon termination or expiry, BIAL has an option to continue to exercise leasehold rights with respect to either the CA Excluded Area or SSA Excluded Area, as the case may be. However, rest of the leased area is deemed to have been surrendered. The fact BIAL has an option to exercise leasehold rights with respect to certain portions of the leased land even without the right to operate the airport makes it apparent that leased land was provided to BIAL for the twin purposes of development of the airport and commercial utilization. As stated above, one of the objectives of providing leased land to BIAL for commercial utilization was to incentivize airport development and expansion.*

*The Authority's proposals in Direction No.5 not to consider the state concessions would greatly impair the financial prospects of BIAL apart from clearly setting at naught the intent of the State while entering into such agreements. The Concession Agreement, State Support Agreement and the Land Lease Deed form the bedrock of the relationship between the State and BIAL for the purpose of operating and maintaining the airport and therefore, no guidelines should be issued by the Authority, which have the effect of truncating the letter and spirit of the Concession Agreement, the State Support Agreement and the Land Lease Deed.*

*Subsequent to the issuance of the tariff orders, the Authority appears to have revised its position in relation to the meaning of the term "concession". The Operation, Management and Development Agreements have been executed between the Airports Authority of India and Mumbai and Delhi Airports. It is an admitted position that the OMDA are the*

repository of state concessions. BIAL understands that, pursuant to communications received by the Authority from the Central Government, the Authority has considered and given effect to OMDA for final tariff determination in respect of Delhi and Mumbai airports. In this view of the matter, the Authority should consider and give full effect not only to the Concession Agreement but also the State Support Agreement and the Land Lease Deed.

From a legal stand point, if the concessions are not considered, the provisions of Section 13(1)(a)(vi) will be rendered otiose. Whereas, if Section 13(1)(a)(vi) and (vii) are considered and given full effect to, the entire gamut of factors prescribed in Section 13(1)(a) would have been considered. In this light, BIAL urges the Authority to reconsider the proposed regulations with respect to applicability of the Concession Agreement, the State Support Agreement and the Land Lease deed.

The Authority, in its final tariff determination orders in the case of Mumbai and Delhi airports, has considered and given effect to the Operation, Management and Development Agreement entered into by the Ministry of Civil Aviation with Mumbai International Airport Limited and the Delhi International Airport Limited. However, in the case of BIAL, in clause 3.2 of Order No.13, the Authority has proposed that the Concession Agreement may require appropriate modifications and in Direction No.5, the rights of BIAL under the Concession Agreement have not been considered. BIAL respectfully submits that the Authority does not have any power or jurisdiction to modify or alter the Concession Agreement executed between the Union of India and BIAL. BIAL has been singled out for prejudicial, differential and discriminatory treatment. BIAL submits that the Authority should give full effect to the Concession Agreement, State Support Agreement and the Land Lease Deed and not regulate services which are beyond the ambit of regulation as per clause 10.3 of Concession Agreement (such services are hereafter referred to as "services other than regulated services").

#### Concession Agreement clauses

The clauses of the Concession Agreement were central to securing financing for the project. The concession clauses clearly indicate a separation of aeronautical and non-aeronautical charges. While indicating that the Independent Regulatory Authority will follow ICAO policies in regulating aeronautical charges, the agreement also sought to employ some explicit provisions which provided commitments to the investors of the project.

i. Article 5.4.3 of concession agreements reads as follows:

*“in recognition of the investment to be made by the shareholders, from time to time, of BIAL and the Lenders and subject to material compliance by such shareholders and the Lenders with all Applicable Law, **Gol will not take any steps or action in contradiction of this Agreement which results in or would result in such shareholders or the Lenders being deprived or substantially deprived** of their investment or economic interest in the Project except in accordance with the Applicable Law.” (Emphasis added)*

*The above provision clearly showcases the intent of the government to protect the interest of the investing community. Lenders to BIAL committed their investments to the project at the financial closure stage, based on the financial model which was developed with an assumption of separation of aeronautical and non-aeronautical sources of income. As shown below, the Central and State governments were party to these agreements as key stakeholders in the project.*

*If the fundamental bid assumptions are changed in any way, the risk perception of the project will increase, resulting in an increased cost of capital. Further, the reduced cash flows may not allow the airport operator to cover the principal repayments, thereby reducing their debt service coverage. This can impact future expansion of airport.*

*ii. Article 10.3 of the Concession Agreement reads as follows:*

*“BIAL and/or Service Provider Right Holders shall be free **without any restriction** to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the Site, other than the facilities and services in respect of which Regulated Charges are levied.” (Emphasis added)*

*The above statement signals the intent of the government for a fundamental separation of the aeronautical and non-aeronautical streams of revenue.*

*In a Single Till system, the overall allowed regulated return for the airport is calculated, and the level of non-aeronautical revenues is subtracted, leaving the remaining deficit to be bridged from aeronautical revenues. Since the overall returns are capped, any increase in non-aeronautical revenues will necessarily decrease the aeronautical tariffs tantamount to defeating the government’s avowed policy of fundamental separation of the aeronautical and non-aeronautical streams of revenue.*

*Any changes to the regulated charges section by the regulatory Authority will trigger a change in law, and BIAL is entitled to compensation pursuant to Article 15.5. In fact, one of the remedies under Article 15.8 available for BIAL is to increase the charge to be levied on the users of the Airport to mitigate the adverse effect of the change in law.*

*It is pertinent to state that Mr. K. Roy Paul, the then Secretary, Ministry of Civil Aviation and former Chairman of Air India Limited, in a paper titled "Airport Modernization in India" has stated as under:*

*"a. The concept of Dual Till agreed to by GOI in the case of BIAL project ensures that the airport investor has greater flexibility to expand non-aeronautical/ commercial operations, which improves airport services and reduces pressure for increasing airport charges.*

*b. The process of selection of the investor through a global competitive bidding process is completely transparent."*

*This lends credence to BIAL's submission that Concession Agreement contemplates regulation under Dual Till approach.*

*Further, Mr. Gajendra Haldea, Advisor to Deputy Chairman, Planning Commission, in his letter dated October 6, 2010 bearing reference number D.O. No. N-14033/3/2005-Infra, has opined that shared / hybrid till presents the best alternative for airports in India.*

*Also, financial closure of BIAL was achieved and VGF was calculated on the basis that BIAL's tariffs shall be determined under Dual Till regulation. Not only BIAL, but State of Karnataka, MoCA and lenders have relied on Dual Till basis and therefore, Dual Till regulation should be applied in the case of BIAL. The same is detailed below.*

*Project Information Memorandum (Detailed Project Report)*

*The project information memorandum that was shared with the bidders, at several points indicated that aeronautical and non-aeronautical services should be treated as distinct sources of revenue.*

*i. Part-II -Clause-1.2 para-1 on page 046, states that modern airports around the world have a substantial quantum of revenue from activities which are not directly linked to aeronautical services. This quantum varies from 50-70% at major airports in the world. The present proportion for non-aeronautical revenues at BIAL is close to 40%, much below the international level. It is clear that unless non-aeronautical revenues are allowed to develop independently, there is no incentive for the airport operator to increase the proportion as the upside would be subsumed by a reduction in the aeronautical tariffs.*

*ii. Part-II -Clause-1.2 para-2 on page 046 states that non-aeronautical activities are expected to significantly augment the revenues from the aeronautical services.*

*iii. Part-II -Clause-1.4 sub clause-19 on page 048 highlights the fact that the airport shall have a distinct and significant commercial orientation to capitalize on the development potential of Bangalore and the region*

*iv. Part II - Para 3.2 on, Page 052 clearly states that it is proposed that non-aeronautical operations shall form a distinct and significant component of the airport investment. It further states that land shall be optimally and innovatively used to maximize commercial and business revenue.*

*v. In Clause-3.3 para-2 on page 078, the government recognizes that private participation in commercial projects requires the projects to be commercially viable.*

*Financial Closure, State Support Agreement and Project Financials*

*In securing financial closure of the project, the project investors created a financial model which operated under the understanding that aeronautical and non-aeronautical sources of revenues are treated distinctly.*

*Central and State government entities were stakeholders to the financial closure as shareholders in the project, and have taken cognizance of this model.*

*Further, as per the amended State Support Agreement, the Government of Karnataka acknowledged the financial model specifically, and used it for the purpose of calculation of the viability gap in the form of state support. Therefore, any changes in the fundamental tariff assumptions would question the entire basis under which the state support was calculated.*

*The entire business plan that was prepared for the project, and shared with the government at various points in time, including for the purpose of securing tariff approvals and finalizing User Development Fees was based on this financial model, and therefore under the assumption of separation of aeronautical and non-aeronautical revenue sources.*

*Several service provider Right Holder Agreements were executed and the Service Provider Rights were granted to our concessionaires based on this concept, as the revenue share under these SPRH Agreements was again derived from the same model. The terms of these agreements range from 5 to 20 years. All these would stand to be affected if the model is assumed to be Single Till.*

*TILL - A POLICY DECISION*

*11. Section 42 of the AERA Act requires the Authority to comply with the policy directions that may be issued by the Central Government. Recognizing the policy implications of determination of an appropriate till mechanism, we understand that the Ministry of Civil Aviation / Central Government commissioned M/s. Bridgelink Advisors to provide a detailed report on Consultation Paper No.3/2009. M/s Bridgelink Advisors submitted their initial report dated July 19, 2010 and recommended the following:*

*(i) Greenfield airports such as Bangalore International Airport, Hyderabad International Airport and Cochin International Airport should be regulated by under a hybrid or shared till mechanism.*

*(ii) Revenues from Cargo and Ground handling services should be treated as non-aeronautical revenue for the purposes of tariff determination.*

*12. In response to the recommendation of M/s. Bridgelink Advisors, the Authority issued a letter dated September 06, 2010 opining that a Single Till mechanism is the most appropriate approach for determination of tariffs. In the said letter, the Authority had requested the Ministry of Civil Aviation / Central Government to favour the Authority with its views on this issue. Recognizing that the issue of till was of paramount importance, and a policy matter, the Authority sought the views of the Ministry of Civil Aviation. The letter dated September 06, 2010 was accompanied by a detailed note containing the Authority's response to the recommendations of M/s. Bridgelink Advisors. In response to the comments of the Authority, M/s. Bridgelink Advisors issued a final report once again recommending hybrid till / shared revenue till framework across airports in India to support incentivization. Thereafter, the Ministry of Civil Aviation also indicated vide its letter dated October 12, 2010 that the Ministry of Civil Aviation is seized of the larger issue of deciding the regulatory till / framework and the views of the Ministry would be conveyed to Authority on finalization of the issue. These communications indicate with complete certainty that the issue of regulatory till was regarded as a policy issue both by the Authority as well as the Ministry of Civil Aviation/Central Government. As stated later in these submissions, the Concession Agreement indicates the policy of the Central Government and therefore, needs to be given effect to, in letter and spirit.*

#### FINANCIAL COVENANTS

*13. Financing agreements including the business plan and details submitted in response to the request for proposal and the tender document were arrived at / calculated on the basis of a Dual Till approach. As is evident from the Concession Agreement, achieving financial close was a condition precedent for the primary provisions of the Concession Agreement to come into effect. Financial close required execution of financing agreements between BIAL and its lenders and such financing agreements were entered into on the basis of Dual Till approach.*

*14. Clause 10.2.4 of the Concession Agreement prescribes that regulated charges that may be approved by an independent regulatory Authority shall comply with the principles referred to in Article 10.2.1 until the earlier of (i) the date that the outstanding debt in respect of the initial phase has been repaid; and (ii) fifteen years from financial close. The*

*Concession Agreement thus provides further protection to BIAL's investments and commitments inter alia keeping in mind the financing agreements that were executed by BIAL. Any alternation of the basis of financing will not only have a direct impact on BIAL, but may also affect BIAL's line of credit adversely. BIAL therefore requests that the basis of the financing agreements be not altered post facto and tariffs be determined in accordance with the Dual Till approach.*

#### AIRPORTS - WHETHER A MONOPOLY

*15. It is the Authority's major premise that the airports in India are monopolistic entities and should therefore be regulated. However, the Authority has not arrived at this conclusion on the basis of evidence of misuse of alleged monopoly by the airport operators. The Authority need to have considered and adopted a light handed regulatory approach and need to have embarked on intrusive regulation only upon evidence of an exploitation of monopoly, if at all. BIAL believes that, on account of competition offered by airports in the vicinity coupled with alternative means of transport and competition in other segments of the airport business by other service providers, BIAL can hardly be considered as a monopoly. Moreover, BIAL will be required to keep in mind market conditions in order to cater to a continuously fluctuating demand and further in order to continue its growth trajectory. In this era of information, any inkling of exploitation of a supposed monopoly would surely act against BIAL's best interests. This is possibly true of all other major airports as well. In this context, BIAL once again requests the Authority to revisit its major premise and reconsider regulation by light handed approach. It is BIAL's view that the threat of intrusive regulation would be a sufficient deterrent for any airport operator to misuse its supposed monopoly. BIAL also refers to the views of Prof. David Gillen in this regard. Copy of Prof Gillen's expert affidavit dated January 12, 2012 which was filed in Appeal No.7/2011 has been enclosed along with these submissions.*

#### **AIRPORTS INFRASTRUCTURE POLICY – IMPACT OF PROPOSED REGULATION**

*There will be a major thrust towards increasing the share of commercial revenue emerging from non-aeronautical sources. This will help in optimal exploitation of the full commercial potential of airports and make many airports not only viable but capable of generating surpluses for further expansion and development. (Ref sl 12, point 1)*

*Except for user developmental fees, there will be total freedom for airport operators in the matter of raising revenue through non-aeronautical charges and there will not be any Government control over the same (Ref sl 12, point 4)*

*The Concession Agreement was executed on the basis of above policy decisions and these policy decisions are captured in Concession Agreement.*

*Prof David Gillen, Transportation Professor, University of British Columbia, Vancouver, Canada*

*“It is my view that ability of BIAL to grow and develop as a regional hub... will be affected significantly by the type of regulation imposed on it due in large part to investment, service and pricing incentives and opportunities. Dual Till is superior to Single Till.*

*It is my view and considered opinion that current ICAO policies do **not** favor implementation of Single Till price regulation. ICAO language in their documents regarding airport charges has changed over time and current document is completely silent on single versus Dual Till.*

*My opinion is BIAL should be faced with at most light-handed regulation.”*

*BIAL has also submitted as follows:*

*Light touch approach will also reduce the costs of regulation and will be in the letter and spirit of the avowed objective of privatization. BIAL proposes that, in the first instance, light touch regulation can be adopted and only in the event of evidence of misuse of supposed market power, resort to intrusive regulation. BIAL believes that the threat of regulation will be a sufficient deterrent for misuse of supposed market power.*

*Adhere to Covenants of loan agreement especially in relation to:*

*(i) loan repayment*

*(ii) Debt Service Coverage Ratios (DSCR)*

*(iii) Debt Service Reserve Account (DSRA) requirements*

*(iv) provision of growth capital, and*

*(v) other covenants of loan agreements.*

*• Article 10.2.4 provides that such approved Regulated Charges shall comply with the principles referred to in Article 10.2.1 until the earlier of (i) the date that outstanding Debt in respect of the Initial Phase has been repaid and (ii) fifteen (15) years from Financial Close.*

*• Lenders relied on Dual Till basis to provide financing to BIAL.*

*• Financial close of the project was a condition precedent for execution of concession agreement.*

***Requirement of an airport in developing economy:***

*• ICAO recognizes that needs of an airport will be different where the airport has long term & long scale investment. In such cases, ICAO recommends the following (refer 9562/7 interpretation of ICAO policies on airport charges):*

*High priority should be given to the investment needs of airports when determining contribution from non-aeronautical services*



*It may be appropriate for airports to retain non-aeronautical revenues rather than use such revenues to defray aeronautical charges*

*Prefunding of projects also recommended only after exploring above option.*

### **EVIDENCE BASED REGULATION**

*Airports are not a monopoly in the sense that there is no incentive whatsoever for airports to exercise their supposed market position.*

*Airports have to compete with other airports in multiple areas such as, for creation of hubs, international passengers, etc.*

*The acid test of exercise of supposed monopoly would have been evident, if the airports are permitted to determine charges without any regulation.*

*By adopting such an approach, evidence could also be gathered about the supposed market power of the airports.*

*The proposed detailed and intrusive regulation has been mooted without determining on the basis of evidence of airport behaviour that such regulation is necessary.*

*International trends point to regulation under a light handed approach, where the airport is free to set charges and the regulator only intervenes upon evidence of abuse of supposed market power.*

*Light touch approach will also reduce the costs of regulation and will be in the letter and spirit of the avowed objective of privatization.*

*BIAL proposes that, in the first instance, light touch regulation can be adopted and only in the event of evidence of misuse of supposed market power, resort to intrusive regulation.*

*BIAL believes that the threat of regulation will be a sufficient deterrent for misuse of supposed market power.*

*BIAL has also submitted on Incentive Based or Price Cap regulation as follows:*

#### *20. Incentive based or Price Cap Regulation:*

*Authority's Approach: Per clause 17.5.1 of Order No.13, the Authority has proposed to adopt "Price Cap Regulation", also termed as incentive based regulation. Per clause 12.9 of Order No.13, the Authority proposes to incentivize upkeep of objective service quality standards by reducing the rebate / penalty from 0.5% to 0.25% of aeronautical revenue, per month, subject to overall cap of 1.5%. Per clause 5.2.5 of Direction No.5, the Authority proposes to include incentive adjustments for forecasting RAB. Likewise, per clause 5.2.6(b) of Direction No.5 which deals with rolling forward of RAB, the Authority has proposed to make incentive adjustments. Certain factual scenarios, in which, the Authority may consider incentivizing the airport operator are set out in clause 5.2.5 of Direction No.5.*

Observations: Neither Order No. 13 nor Direction No. 5 set out with any clarity the circumstances in which the Authority will provide incentive adjustments. In Order No.13, the Authority proposes to incentivize the airport operator by reducing the minimum rate of penalty / rebate to 0.25% from 0.5% per month for non – compliance with objective service quality parameters. A reduction in the monthly rate of penalty can hardly qualify as an incentive. In contrast, the Authority has proposed detailed regulations for levying rebate/penalty for under performance with respect to subjective and objective service quality parameters. In Order No.13, the Authority has extensively dealt with service quality rebate / penalty in clauses 8.1.3, 12.9, 12.15, 12.16 and 17.5.9.c. Service quality rebate has been defined in clause 6.14 of Direction No. 5. Service quality rebate is proposed to be imposed in the event the airport operator does not achieve service quality standards specified by the Authority. The quality standards and the measurement mechanism are detailed in Appendices 2, 3 and 4 to Direction No.5. The approach adopted by the Authority with respect to incentives and rebates is starkly different and very unfair to the airport operator. While there is complete lack of clarity with regard to incentivization, detailed guidelines have been prescribed for levying penalty. It is surprising that the Authority has extensively dealt with rebates/ penalties for under performance with respect to service quality parameters. However, neither Order No.13 nor Direction No.5 indicate with any certainty, the incentivization mechanism. This is clearly unfair to the airport operators. Moreover incentive based regulation appears to be the fulcrum of Order No.13 and the ostensible reason for the Authority rejecting cost plus regulation / rate of return regulation. The lack of clarity about incentive adjustments pose serious concerns with regard to the entire scheme of regulation proposed via Order No.13 and Direction No.5. In pith and substance, the proposed scheme of regulation, does not qualify as “incentive based regulation”. Moreover, if the Authority were to propose detailed guidelines for incentivization, similar to the proposed regulations with respect to service quality rebates, the airport operators would be inundated with tedious compliance considerations and the airport operator’s freedom of enterprise and entrepreneurship would be severely restricted. This is of utmost concern to BIAL inter alia because BIAL undertook development of a Greenfield Airport on the strength of express promises for securing to BIAL complete freedom to regulate its affairs, but for certain services termed as “regulated charges/ services”, under the Concession Agreement. BIAL humbly submits that an intrusive regulation consisting of multiple rebates and incentives would result in severe distortion of market dynamics and would be the very antithesis of privatization and/or induction of private management capacities which is the stated objective of the

*Airport Infrastructure Policy of 1997, the 2003 amendments to the Airports Authority of India Act and AERA Act.*

*Submissions: BIAL once again humbly requests the Authority to reconsider the entire gamut of the proposed regulations and regulate by the light handed approach. Neither the incentive mechanisms nor price caps should be made applicable for services other than regulated services.*

26.2 BIAL has submitted on Targeted Efficiency Improvement as follows:

#### *34. Targeted Efficiency Improvement*

*Authority's Approach: in clause 6.5 of Direction No.5, the Authority has proposed to consider "X – factor" or targeted efficiency improvement. The Authority has proposed to simulate a competitive environment in a non-competitive situation by allowing airport operator to raise tariff(s) to offset cost increases, but by a rate lower than inflation, in order to encourage greater efficiency. The Authority has also noted that the assessment of efficiency improvement can be complex and requires a variety of considerations such as key performance indicators relating to trends in cost per passenger, efficiency factors applicable to other entities in the country, impact of various levels of efficiency factor on revenues, operation and maintenance expenditures and returns and historical profitability and performance.*

*Observations: The Authority has not set out the manner in which it would arrive at the X factor, while recognizing that the Authority is required to take into account a wide array of factors. The approach of simulating a competitive environment by Authority appears to be outside of the jurisdiction as provided under the Act. The function of the Authority as provided under section 13 of the AERA Act is restricted to determination of tariff, on the basis of expenditure incurred by the airport operator. Realistically, simulation of a competitive environment is fraught with uncertainties, which is something the Authority recognizes by listing the multitude of factors that the Authority may have to consider in determination of the X factor. In such circumstances, the possibility of the cost of regulation being more than the efficiency that regulation may bring in, cannot be ruled out. Further, it is beyond doubt that such attempts will largely restrict entrepreneurial freedom and enterprise and will be the very antithesis of the philosophy with which private airports were introduced in the country. The Authority has not provided for situations where the airport operator is unable to comply with the X factor because of factors which are beyond the control of the airport operator. This is especially important because a multitude of factors are involved in efficiency improvement. The Authority has not appreciated the business reality that, inevitably, either supply is greater than demand*

or vice versa. It is rarely that both are in perfect tandem. The business of airport development can hardly be equated and understood in mathematical terms, bereft of practicalities involved. Attempts by the Authority to simulate market environment may lead to distortions which will affect not only the airport operator but the users at large. Also, the Authority proceeds on the assumption that there is insufficient competition, which assumption itself is questionable. A long line of experts including Prof. David Gillen, whose affidavit filed in Appeal No.7 is enclosed along with this submissions, opine that airports cannot be considered to be monopolies because airports face competition in different aspects of their business from other service providers.

Submissions: The proposals of the Authority to consider X factor must be revisited. Audited accounts must be considered to provide appropriate returns and BIAL prefers that simulation of competitive environments need to be avoided. The Authority should not apply the X factor in respect of services other than regulated services.

26.3 BIAL has submitted on Over-recovery / Under-recovery as under:

*Over-recovery and Under-recovery:*

27. Authority's Approach: Per clause 6.10.2(c) of Direction No.5, the Authority has proposed to provide adjustments for under-recovery only on account of the terms detailed in clause 6.10.2(c). It has been clarified that under-recovery for any factors like change in traffic mix, etc. shall not be compensated. On the contrary, as per clause 6.20.2, the Authority has proposed that over-recovery, if any, irrespective of the reasons for such over-recovery shall be clawed back. Further, per clause 6.21.3 the Authority has proposed that it shall normally not provide error correction for variation in operation and maintenance expenditure (other than other mandated operating costs and statutory operating costs); variation in fair rate of return and variation in revenues received from services other than regulated services. Per counter affidavit dated June 22, 2011, filed on behalf of the Authority in Appeal No.7, the reason for such a proposal seems to be that error correction for under-recovery should be allowed only when under-recovery has occurred for reasons totally beyond the control of the airport operator.

Observations: As stated with respect to error correction about traffic forecasts, it is very difficult to predict with any amount of certainty let alone accuracy. In such circumstances, the airport operator cannot be found fault with or punished for under-recovery. To illustrate, the case of traffic mix is a scenario where there is an error in prediction with respect to the precise volumes of arriving and departing passengers. It can hardly be said that a prediction error with respect to traffic mix is within the control of the airport operator. To further illustrate, no provision has been made for under-recovery in force

*majeure situations. Also a differential treatment for over-recovery and under-recovery i.e., complete claw back in case of over-recovery and limited error correction in case of under-recovery is unfair and imposes an undue burden on the airport operator. This burden is heightened on account of the fact that the differential treatment is merely on account of an error in prediction. The observations in the case of forecasting error correction would also apply to the proposed regulations regarding under-recovery and over-recovery.*

*Submissions: The Authority need to consider providing complete under-recovery to bring it on par with proposed regulations regarding over-recovery. Without prejudice to BIAL's submission that there should be no regulation of services other than regulated services, error correction with respect to under-recovery must also be provided for services other than regulated services, whenever such services are proposed to be regulated by the Authority."*

26.4 Further to the above, BIAL has also submitted a letter to the Hon'ble Minister, MoCA on 15<sup>th</sup> April 2013 requesting for MoCA to *make a policy on Till to be adopted and issue appropriate direction to AERA under Section 42(2) of the AERA Act, 2008*" and a need to *"issue policy directive under Section 42 (2) to keep any Real Estate Development revenue and expense out of the purview of tariff determination as AERA has no jurisdiction on such off airport development"*.

26.5 In support of its submission BIAL has submitted various documents including Prof. David Gillen's affidavit, Article of Shri K Roy Paul on "Airport modernisation in India", Copy of Dr. Gajendra Haldea's letter to the Authority dated 6<sup>th</sup> October 2010, extracts from Project Information memorandum, Concession agreement and Letter dated 12<sup>th</sup> April 2013 issued by ICICI Bank to BIAL.

**(b) Authority's examination of submissions of BIAL in support of Till and other matters**

26.6 The Authority has carefully examined the various submissions made by Bangalore International Airport Ltd. (BIAL) with respect to Dual Till. The grounds considered by BIAL for supporting Dual Till Regime include:

- 26.6.1 Concession Agreement contemplated Dual Till
- 26.6.2 Manner of Adhoc UDF Determination of BIAL by MoCA
- 26.6.3 Tariff determination Mechanism adopted in case of Mumbai and Delhi Airports-
- 26.6.4 Affidavit by Prof. David Gillen
- 26.6.5 ICAO Policies on economic regulation
- 26.6.6 Report submitted by Bridge Link Advisors to Government with reference to the Consultation Paper issued by the Authority
- 26.6.7 Article written by Shri K Roy Paul

26.6.8 Financial covenants and lender's letter

26.6.9 Letter of Prof. Gajendra Haldea

26.7 BIAL has also submitted that the airports have to be first governed by the "Light Touch Approach"

26.8 The Authority proposes to analyse each main category of submission made by BIAL/ documents submitted by BIAL and detail its views on the same in the following paragraphs.

### **Light Touch Approach**

26.9 At the outset, the Authority notes the BIAL's submission in the appeal before AERAAT regarding the adoption of Dual Till regulation. In its submission through an affidavit, it had not indicated or proposed light touch regulation. However, subsequently vide BIAL's affidavit dated 12<sup>th</sup> January 2012 it brought before the Tribunal what was termed as "testimonial affidavit" by Prof. David Gillen. The Authority notes that BIAL in its submission had requested that:

*"BIAL proposes that, in the first instance, light touch regulation can be adopted and only in the event of evidence of misuse of supposed market power, resort to intrusive regulation. BIAL believes that the threat of regulation will be a sufficient deterrent for misuse of supposed market power.*

26.10 In addition to the above, BIAL in a separate submission, requested that Dual Till approach be followed. It has also submitted that:

*In order to contribute to the regulatory process, BIAL is also suggesting certain alternative regulatory mechanisms, which may not only be in full compliance with statutory requirements, but also aid in airport development and modernization*

26.11 The Authority needs to act within the mandate of the Act through which the legislature has given detailed policy guidelines as to the factors it needs to take into account while determining tariffs for the aeronautical services. Light touch regulation as contemplated by Prof. Gillen is not within the framework of the provision of the AERA Act and that the Authority does not have the legal jurisdiction to follow this approach. Therefore, the Authority does not propose to follow the path of light touch regulation. The Authority therefore has analysed the implications of tariff determination both under Single Till and Dual Till approaches.

26.12 **Report of Commerce Commission New Zealand (Excessive Pricing):** On excessive pricing, the Authority has also noted a recent finding (Feb 8, 2013 of Commerce Commission New Zealand in its "Report to the Ministers of Commerce and Transport on how effectively information disclosure regulation is promoting the purpose of Part 4 for Wellington Airport" Section 56G of the Commerce Act 1986) wherein the Commission found that its information disclosure (ID) regime, has not prevented the Wellington airport from charging excessive airport rates that has enabled it to obtain

more than fair rate of return on its investments and that ID has not been effective at limiting excessive profits. The Authority notes that the Airport charges in New Zealand are under light handed regulation.

**26.13 Report of Dutch Competition Commission (NMa):** As regards the light handed approach adopted in Australia for regulating its airports, the Authority has also come across a report commissioned by the Dutch Competition Commission (NMa) through German Aviation Performance (GAP), titled “The economic market power of Amsterdam Airport Schiphol”. The report was released in Jan 2012. Prof. Starkie reviewed the same<sup>12</sup> on 23rd March, 2012 which is available on the Airneth website ([www.airneth.nl](http://www.airneth.nl)) commenting on some aspects of the study and giving his opinion, inter alia about the experience of Australian regulation, the countervailing power (or absence thereof) of the airlines arresting the tendency of the airport (under light touch regulation) to charge excessive tariffs and the role of negotiations between the airport and airlines therein. According to Prof. Starkie, non-aviation activities may restrict the airport incentive to increase charges for aviation activities because aviation activities exert a positive externality on the non-aviation services. Prof. Dr. Andreas Polk on behalf of the GAP study team wrote a rejoinder thereto on 6<sup>th</sup> Sept 2010<sup>13</sup> and has countered the observations and comments of Prof. Starkie. Salient points of the comments of Prof Starkie as well as Prof. Polk’s rejoinder are given below.

**26.14** Commenting on non-aviation activities restricting the airport’s incentive to increase charges for aviation activities, and the issue of **market power** Prof. Polk comments that

*To our understanding the author in fact argues that the non-aviation activities might restrict the airport's incentives to increase charges for aviation-activities, because aviation-activities exert a positive externality on the non-aviation services. The airport will internalize these effects by reducing charges. More simply stated: The more traffic the airport attracts, the more customers shop at the airport, which in turn increases revenue in the non-aviation shopping and parking business. Thus, according to this argument, a dominant airport will voluntarily not exercise market power. It has incentives to lower its airfares to a competitive level<sup>14</sup> in order to internalize the externality and attract customers for the non-aviation business areas. So why discuss market power at all instead of releasing all airports from regulation?*

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<sup>12</sup> “The economic market power of Amsterdam Airport Schiphol: A review” by Prof Starkie <http://www.airneth.com/news/details/article/the-economic-market-power-of-amsterdam-airport-schiphol-a-review/>

<sup>13</sup> “The economic market power of Amsterdam Airport Schiphol: A Rejoinder.” By Prof Polk <http://www.airneth.com/news/details/article/the-economic-market-power-of-amsterdam-airport-schiphol-a-rejoinder/>

<sup>14</sup> Whatever "competitive" might mean in this context, as almost any company has market power to some extent. The relevant question is *how much* market power is necessary to justify regulation

*The argument may indeed play a role and the author correctly indicates at this possibility but in terms of regulation, the incentives to internalize must be very strong and effectively restrain the market power of the airport. Furthermore, it would have to restrain the airport from exercising its market power in all relevant areas of aviation activities (i.e. O&D passengers, transfer passengers and cargo). From our point of view, this is not the case and during our investigations, we did not come over any indication that this aspect is strong enough to render regulation superficial. However, we agree that this aspect is indeed an interesting question and should be subject of further research.<sup>15</sup> But even if we took this aspect into account, the comment confines itself to simply indicating at what could be a problem, **but does refrain from giving any evidence or at least indication that the argument might indeed be important in practice and beyond mere theoretical ideas.** (Emphasis added)*

26.15 As far as the issue of **light-handed regulation in Australia** is concerned, Prof. Polk in his comments calls it “an interesting experiment”, asking the question, namely, “but what does this prove?” Prof. Polk’s comments on this issue are:

*“Yes, the Australian approach towards airport regulation is different, as the comment correctly notes, and we think it’s an interesting experiment. But what does this prove? The Australian system of income taxation and the Australian social security system also differ more or less from the European as well as from the American approach. Are they also superior, just because they’re Australian? The Australian approach of (non) regulation is indeed an interesting experiment and we are sure will see future research on how it performs compared to the regulatory approaches used in so many other countries around the world. But without further research it appears too speculative from our perspective to solely rely on this argument, as long as there is no evidence that the internalization effect is strong enough to outweigh all other indicators pointing towards the existence of market power of Amsterdam airport Schipol.”*

26.16 On the aspect of **negotiation and bilateral bargaining**, Prof. Starkie had commented that:

*“airlines have sunk costs at particular airports, that they are faced with high switching costs and therefore are vulnerable should an airport exercise pricing power. But airports too have sunk costs and are potentially vulnerable in the new era to possible capricious behaviour by airlines exercising their new found freedom of establishment. Fortunately, the world of commerce has development mechanism for dealing with this problem. It is*

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<sup>15</sup>One aspect which needs to be taken into account is the extent of market power in the non-aviation sector, which is likely to exist to a certain extent, and how this relates to the incentives to lower airfares.



*for the respective parties to negotiate a contract securing their respective long-term positions and there are now many examples of contracts between airports and airlines which stipulate prices, qualities of service and a commitment to invest on the part of the airport and to base aircraft on the part of the airline.”*

26.17 Prof. Polk has also given his comments as follows:

*“The comments correctly indicate that the aspect of sunk costs may well work in both directions, but immediately finds relief in what David sees as one of the healing inventions of modern economic systems (its bilateral bargaining, not to put you on the rack). The proposed solution is simple: If the airport negotiates contracts with the airlines, the problem of market power vanishes into the air, just because there are negotiations! Those guys of you with kids may know the experience that bilateral bargaining may well be one-sided (the others, guess how!). **So is the pure existence of bargaining really sufficient to render questions of market power superfluous? We think not....** (Emphasis added). Thus bilateral bargaining over the regulation domain is less attractive for the airport and it does not play a major role for the determination of aviation charges....The comment (of Prof Starkie) hints at some interesting questions for future research: Among these are the issue of costs and benefits of regulation, the appropriate approach towards it, or the **lessons we can learn from the Australian experience (did I say experiment?) of freeing up airports.**”(Emphasis added)*

26.18 The purpose of the above discussion was to indicate different views of experts as well as Regulatory and Competition Authorities regarding the Light Handed approach to the economic regulation of airports. The Authority would need to follow, in the Indian context, the provisions of AERA Act which embody the legislative policy guidance in this matter. It would thus be inappropriate to graft only one or two elements like Light Handed approach from other countries onto the Indian context.

26.19 In the Indian context, the airport’s viability (including requirements for Capital Expansion) is heavily contributed directly by the passengers (around two thirds or so) through the UDF as it directly impinges on the passengers. The Concession Agreement entered into between BIAL and Gol also requires the Authority to determine the User Development Fee. In as much as the UDF is a revenue enhancing mechanism to enable to the Airport Operator get Fair Rate of Return, calculations with respect to different building blocks in terms of the expenses, asset base as well as Fair Rate of Return become necessary under Schedule 6. This is apart from the determination of other Regulated Charges like LPH and Passenger Service Fee.

26.20 One of the important objectives of economic regulation of airports is to protect the reasonable interests of the end users (viz. the passengers and cargo facility users), balancing it with the legitimate interests of the airport operator of getting a fair rate of return on his investment (consistent with the risk profile with all the attendant risk mitigating measures proposed by the Authority). The Indian Legislation has given detailed Policy guidance to the Authority in the matter of determination of Aeronautical tariffs. In its White Paper (WP No. 01/2009-10) dated 22<sup>nd</sup> December 2009, that outlined different alternatives of Economic regulation of Airports, the Authority had put up for Stakeholders consultation that it would calculate the Yield per passenger and leave it to the Airport Operator to decide on the individual components that would aggregate to YPP in its discretion.

26.21 The Government in its response did not support this alternative and in its comments on “Form of Price Control and Tariff structure” has stated that:

*“Individual tariff structure may be more appropriate as different charges would have different bearing on the end users. Any subjective decision by the Airport Operator, which most likely will be shrouded in ambiguity, would lead to unnecessary criticism at later stage”*

26.22 Hence, GoI was averse to the Airport Operator having freedom to determine individual tariff for Aeronautical services subject to an overall Price Cap. Adoption of a Light Handed Regulatory Regime of the type as operates in Australia or for that matter, in New Zealand, for India is not feasible.

**Promises made to BIAL’s shareholders be respected:**

26.23 As indicated in Para 26.1 above, according to BIAL, its Shareholders made commitments to develop a world class airport in Bengaluru on certain promises made and the framework in which the shareholders made their investments and commitments be respected and adhered to. The Authority understands the various agreements signed between BIAL with Authorities like GoK (Land Lease Agreement/ Deed, SSA), GoI (CA) as well as the SHA would constitute the framework as well as obligations for both the Shareholders of BIAL as well as Public Authorities. Coming specifically to the issue of Regulatory Till, the Authority has analysed the covenants of these documents and does not find any warrant to indicate that, as submitted by BIAL, that Dual Till is “implied” therein. On the other hand, the Concession Agreement specifically refers to the formation of Independent Regulatory Authority (IRA). The proposals that the Authority has put up for Stakeholders Consultation take into account the genuine requirements of the Shareholders in terms of inter alia, the Fair Rate of Return, need for funding the expansion. The proposals on the other hand also take into account the interest of the Passengers (lowering the charges directly impinging upon them viz.

UDF) as well as taking into account the explicit provisions contained both in the Land Lease Agreement (purpose for utilisation of land granted by GoK) as well as the covenants in the Shareholders Agreement that according to the plea taken by BIAL, put restrictions on the possibility of further equity infusion.

26.24 BIAL has in Para 26.1 above referred to the Airport Infrastructure Policy, 1997 according to which, one of the components was “revenue from non-aeronautical sources as an internal resource for financing of airport infrastructure”. None of the agreements refer to the Airport Infrastructure Policy. Once an agreement is signed, it will need to be read with respect to the covenants contained therein. The Authority notes that in one of its submissions on position under AERA Act, BIAL has stated that *“Authority’s reliance on the Standing Committee Report is misplaced in law. A Parliamentary Committee Report on a bill cannot be a tool for interpretation of a subsequently enacted statute”* and that it should *“rely on the very words employed in Section 13(1)(a)(v), to cull out the true import of this Section.”*. The Authority has adequately addressed the issue of the history of AERA Act in Para 26.54 below and does not wish to repeat the same here. BIAL however draws inferences from Airport Infrastructure Policy (1997) that pre-dates the signing of the Concession Agreement by at least 6 years. BIAL’s stated position regarding deliberations of the Parliamentary Standing Committee and at the same time reliance on Airport Infrastructure Policy, 1997 are mutually inconsistent. Hence, to interpret the express and unambiguous covenants in the Concession Agreement, reference to the Airport Infrastructure policy is unwarranted. Secondly, the Concession Agreement itself contains provisions for formation of IRA to regulate “any aspect of Airport activities”. Services like CGF are included in the list of such “Airport Activities”. CGF is also defined as Aeronautical Service under AERA Act. The Authority has, based on assessment of materiality, competition, user agreements etc., after Stakeholders Consultation, determined the tariffs for these services as were proposed by the respective Service Providers. As far as the issue of financing the expansion is concerned, the Authority has separately addressed this requirement adequately within the framework of the regulatory till that it would finally propose for Stakeholders Consultation keeping in view the reasonable interests both of users as well as those of BIAL. The Authority thus does not feel that BIAL’s shareholders need have any concerns on this count. The Authority thus feels that it’s proposal are in consonance with the AERA Act and the framework of different agreements.

#### **Shri K Roy Paul’s article on “Airport Modernisation in India”**

26.25 BIAL has also annexed an article by Shri K Roy Paul, the then Secretary of MoCA, dated 9<sup>th</sup> June 2003 that according to BIAL is an indication of Dual Till being contemplated in Bengaluru International Airport. From the relevant paragraph it would appear that the reference to Dual Till in case of BIAL is made in the context of ensuring that *“the airport investor has greater flexibility to*

*expand non aeronautical/ commercial operations which includes Airport Services and reduces pressure for increasing Airport charges*". The Authority therefore infers that the basic purpose was to improve airport services as well as moderate airport charges.

26.26 Secondly, in BIAL's letter to the Hon'ble minister dated 15<sup>th</sup> April 2013, BIAL, while arguing about the ICAO policy not mandating Single Till has made the following points:

*"If ICAO policies on user charges had mandated Single Till, then the same would have been clearly mentioned in the policy documents (but this is not so)*

*(Secondly) if Single Till was propagated by CA it would have simply stated that Single Till would be adopted while determining Airport charges (again it is not so)"*

26.27 The Authority notes that following the above argument made by BIAL with respect to Single Till, if the Concession Agreement had intended Dual Till, it would have clearly stated that Dual Till would be adopted while determining Airport Charges. However, this is not so. Furthermore, the Concession Agreement specifically refers to the formation of Independent Regulatory Authority (IRA). The CA also states that such Authority may regulate any aspect of Airport Activities. Airport Activities as mentioned in Part I of Schedule 3 and especially includes inter alia, the services of Cargo, Ground handling and fuel supply in addition to a host of other services that can normally be called "Non Aeronautical". Hence the CA itself clearly spells out the GoI intention that some or all of the Airport Activities may be regulated by the Proposed IRA. The Parliament has set up the Authority and given its legislative policy guidance to determine tariffs for aeronautical services. While so doing, it has also required of the Authority to take into account the "revenue from services other than aeronautical services". Hence, Dual Till that does not take into account such revenue from services other than aeronautical would seem to run counter to the legislative policy guidelines and thus not implementable.

#### **Adhoc UDF Determination**

26.28 The Authority has noted the contents of the letter dated 15<sup>th</sup> April, 2013 from BIAL to Hon'ble Minister of Civil Aviation regarding determination of Aeronautical charges of BIAL. In this letter, BIAL has given the background of determination of Adhoc UDF by MoCA. In this letter, BIAL has referred to two documents, namely (a) Concession Agreement dated 5<sup>th</sup> July, 2004 and AERAAT order dt. 15<sup>th</sup> February, 2013. In this letter, BIAL has indicated that it approached Ministry of Civil Aviation (MoCA) for allowing UDF for international and domestic departing passengers @ Rs.1070 and Rs. 675 per passenger respectively. As against this request, MoCA allowed UDF of Rs.1070 (inclusive of taxes) for international departing passengers, however, reduced UDF for domestic departing passengers of Rs. 260 (inclusive of taxes) per passenger. BIAL has stated that its application for UDF was based on Dual Till and that MoCA allowed UDF for international passengers

based on Dual Till but for domestic passengers it considered cross-subsidisation of aeronautical charges from part of the non-aeronautical revenue. According to BIAL, the extent of cross-subsidisation was 30% in line with UDF finalized by MoCA for AAI airports, namely, Ahmedabad, Amritsar, Jaipur, Mangalore, Trichy, Udaipur and Varanasi.

26.29 The Authority had occasion to note the MoCA's determination of UDF in respect of AAI airports (CP No. 9/2013-14 dated 21<sup>st</sup> May 2013). As has also been noted therein, as far as the airport of Ahmedabad is concerned, the UDF was determined not by MoCA but by the Authority vide its Order dated 18<sup>th</sup> May, 2010.

26.30 Secondly, the Authority notes that, in case of BIAL, the dates from which the International UDF determined by the Govt. became effective was 24<sup>th</sup> May, 2008 (vide its letter dated 3<sup>rd</sup> April 2008) while the effective date for adhoc UDF for domestic passengers was 16<sup>th</sup> January, 2009 (vide its letter dated 9<sup>th</sup> January 2009).

26.31 Thirdly, since the UDF is a revenue enhancing measure, it's rate needs to have some reference to the period for which it is permitted to be levied.

26.32 Fourthly, BIAL's letter itself say that according to its information, the adhoc UDF for domestic passengers was not made on Dual Till but on 30% subsidization from non-aeronautical revenue (shared revenue till). If this is the methodology followed by MoCA, the Authority observes that this is at variance from the stand taken by BIAL in its appeal before AERAAT that the Concession Agreement (CA) *'implies'* Dual Till. BIAL does not appear to have challenged in any Judicial forum, the determination of Adhoc UDF by the Govt. for domestic departing passengers based on what BIAL would regard as incorrect reading of the CA, in that the Govt. determined the adhoc UDF not according to Dual Till but shared revenue till at 30%.

26.33 Fifthly, BIAL's statement that 30% shared revenue till, in case of BIAL, adopted by Govt. was *"in line with UDF finalized by MoCA for AAI airports"* does not appear to be chronologically in order in as much as Government's determination of UDF in AAI airports was made in 2010 (that is to say, after January, 2009) and thus, the Government's determination of UDF for AAI airports does not predate its determination for BIAL.

#### **Tariff determination for CGF**

26.34 BIAL's letter also makes a point regarding provisions for charges under Concession Agreement, stating that Concession Agreement gives freedom, without restriction to BIAL and/or service providers, right holders to determination such charges. The Authority has always maintained that it is required to take into consideration under Section 13(1)(a)(vi) of AERA Act any concessions granted by the Central Govt. and as such it would duly consider the provisions of the Concession Agreement. However, while so doing, it would also be bound by the specific legislative guidance with regard to the definition of aeronautical services.

26.35 Under AERA Act, Cargo, Ground Handling and Supply of Fuel (CGF) to aircraft are regarded as aeronautical services, hence the Authority is required to determine the charges for the same. Appeal of the Bengaluru International Airport before the Tribunal (Appeal No. 12 of 2011) challenging the jurisdiction of the Authority to determine the charges for CGF, was withdrawn by it after argument before AERAAT spanning two years. By the judgment of the AERAAT delivered on 3<sup>rd</sup> May 2013, AERAAT allowed the Bengaluru International Airport to do so and in its concluding part has directed that *“implementation of tariff may now commence”*. This means that the tariffs for the three services of CGF as have been determined by the Authority under the AERA Act would come into operation. Bengaluru International Airport has not pressed the plea that the Authority has no such jurisdiction to determine charges in respect of CGF services in view of the Concession Agreement which does not classify these charges as regulated charges. Hence the charges for these services, as determined by the Authority in accordance with the provisions AERA Act has now become applicable as per AERAAT’s order.

26.36 Furthermore, while in the instant case BIAL has stated in its letter to Hon’ble Minister as well as in its averments before AERAAT that the Concession Agreement should be followed. The Authority notes that its largest stakeholder, namely, M/s GVK Group did not have similar insistence of adhering to contractual agreements in respect of Mumbai airport. GVK Group had not wanted the provisions of the agreements like OMDA in respect of CSI Airport, Mumbai to be strictly followed wherein OMDA had stipulated that all finances of CSI Airport, Mumbai must be brought by the joint venture company namely MIAL through equity and debt. Even so MIAL submitted application for grant of development fee first to the Government and thereafter to the Authority. The Government as well as the Authority considered the provisions of acts like Airports Authority Act (Section 22 A thereof) and AERA Act, 2008 (Section 13 (1) (a) (i) read with Section 13 (1) (b)) and determined DF giving primacy to the provisions of the Acts passed by the Parliament over stipulations made in contractual agreements. Thereafter, (vide para 26.155 below) Hon’ble Minister of Civil Aviation had *“asked the AAI to take on priority the equity infusion with the purpose of abolition of ADF”*, expecting MIAL as well as DIAL to meet the present funding gaps through equity infusion and proportionate raising of loans so that ADF will stand abolished. Hon’ble Minister had also directed AAI to submit the proposal for equity infusion to the Authority. Accordingly, AAI submitted necessary proposals of its ability for equity infusion of Rs. 93 Crores in DIAL and Rs. 293 Crores in case of MIAL. Both DIAL and MIAL however represented to the Authority that the Private Shareholders were not in a position to contribute their share of additional equity. Both these companies also did not make any cash call for additional equity. The Authority notes that DIAL and MIAL had requested the GoI and later the Authority to follow and take recourse to the provisions of the Development Fee as contained in Section 22A of the AAI Act and Section 13(1)(b) of the AERA Act though according to OMDA as well

as the subsequent development namely the press release by MoCA, Companies were expected to bring in additional capital in the form of equity / debt for financing the Project. Hence, it can thus be said that DIAL and MIAL did not want to adhere to the provisions of OMDA.

26.37 In the instant case, however, BIAL wants to go by what is its interpretation of the Concession Agreement both in respect of Regulatory till (it has stated in its letter to the Hon'ble Minister for Civil Aviation that Concession Agreement means Dual Till) as well as its interpretation that under Concession Agreement the services like cargo, ground handling and fuel supply are not to be regulated (though these services are defined as aeronautical services under AERA Act according to which the Authority is required to determine the tariffs for these services). Apart from the clear and unambiguous provisions of the AERA Act (defining CGF services as Aeronautical Services) even within the Concession Agreement, it is expressly mentioned that the Government would set up an Independent Regulatory Authority (IRA) and that the IRA would be set up to regulate **any aspect** of Airport Activity. The services of Cargo, Ground Handling and Fuel Supply form part of the Airport Activities under the Concession Agreement (vide Para 26.62 below). Hence, there does not appear to be any cause for grievance on the part of BIAL if the IRA were to regulate "any aspect" of the CGF Services which form part of the Airport Activities. With the enactment of AERA Act there can thus be no doubt that the Authority is required to regulate CGF services. BIAL's interpretation that under Concession Agreement the services like cargo, ground handling and fuel supply are not to be regulated appears to be selective approach and convenient reading of the provisions of the Concession Agreements and the AERA Act.

#### **Business Plan considered for financing / Bank's letter**

26.38 The Authority has also noted the letter from M/s ICICI Bank dated April 13, 2013 which BIAL interpreted as supporting Dual Till in the financial business plan used at the time of funding of the initial phase of construction by the lenders in 2005.

26.39 The operative part of this letter states that according to ICICI Bank, for the purpose of financial close for the project (a) it was assumed that airport charges will be regulated and is to be determined by the MoCA/Independent Regulatory Authority (IRA) and (b) other charges may be determined by BIAL.

26.40 As far as (a) is concerned, these are the charges mentioned in the Concession Agreement as regulated charges. As regards (b), the Authority notes that it has found that provision of services of CGF, namely Cargo, Ground Handling and Fuel Supply are either competitive (Cargo, Ground Handling and Into plane services) or are supported by reasonable user agreements (Fuel Farm) at Bengaluru International Airport and thus adopted light handed approach (in accordance with its CGF guidelines) in its tariff determination for these services. As a consequence, it has determined, after Stakeholders' consultation, the charges as were indicated to it by the respective service providers.

26.41 The complete reading of Clause 10.3 of the Concession Agreement is as under:

*“BIAL and/or service provider, right holders, shall be free without any restriction to determine the charges to be imposed in respect of facilities and services provided at the airport or on the site, other than the facilities and services in respect of which regulated charges are levied.”*

26.42 Since the Service Provider Right Holder i.e. the ISPs had submitted their tariff proposals for CGF to the Authority and after examination the Authority had found that they operate in competitive environment, the Authority had approved the rates as were submitted by these service providers. Hence purely from the standpoint of determination of other charges, the Authority did not feel the need to deviate (and lower) the charges proposed by the service providers in so far as the CGF is concerned.

26.43 However, BIAL itself went in appeal to AERAAT against the CGF Guidelines stating that the service providers are agents of BIAL and hence cannot approach the Authority for determination of tariffs for these Aeronautical services provided by what BIAL averred to be its Agents. BIAL however has not indicated at that stage (or even now) what are the charges for these services that BIAL intended to levy. BIAL averred that *“The Concession Agreement excludes regulation of ‘the services of Cargo Facility, Ground Handling and Supply of Fuel to aircraft’* and thus had also challenged the jurisdiction of the Authority to determine charges for these services. On the averments of BIAL, AERAAT granted stay to implementation of the tariffs determined by the Authority for CGF. The stay continued from around October 2011 till May 2013 (when BIAL withdrew the appeal and AERAAT issued its Order dated 3<sup>rd</sup> May 2013, amended on 10<sup>th</sup> May 2013 stating that the tariffs should now be implemented). The tariffs determined by the Authority for these services were generally higher than the earlier tariffs and if they were implemented from October 2011, more revenue would have accrued to BIAL. Hence its professed concern for the requirement of ICICI Bank’s letter does not appear to be rooted on sound financial considerations, especially when BIAL itself withdrew the appeal only after over a span of 1 ½ years. Apart from this, the Authority also observes that Schedule 6 of the Concession Agreement gave an option to BIAL to increase the regulated charges of Landing, Parking, Housing and PSF by inflation index from 2001 (the effective date of AAI tariff) upto the Airport Opening Date (the alternative option being to continue to levy the then prevailing tariffs as of the Airport Opening Date that are charged by AAI in its other airports). The Authority notes that BIAL, did not choose to increase the regulated charges by inflation index from 2001 to 2008. AAI had not increased its charges at the other Airports and hence they remained at the same level as on 2001. Therefore, BIAL opted to levy charges in 2008 as were existing in 2001.

26.44 As regards other charges (other than CGF), these can be generally called charges for non-aeronautical services (normally within the terminal building). The Authority has not determined the



same as they are outside its legal mandate and jurisdiction under AERA Act.

26.45 At any rate, the Authority is cognizant of the requirements of adequate funds for the project, including expansion. Under the AERA Act (Section 13(1)(b)) UDF can be used as a Revenue enhancing measure to enable the Airport Operator to earn a Fair Rate of Return on his Investments. The Concession Agreement states that one of the purposes for which the legal instrumentality of User Development Fee (UDF) can be used, is for development and expansion of the facilities at the airport (vide Para 4.21 above). The requirement of UDF would need to be addressed as and when it arises which is what was done by the GoI in 2008 and 2009.

26.46 In sum, the proposals of the Authority put forth in this Consultation Paper, for Stakeholders' consultation addresses the issues indicated in the ICICI Bank's letter and that concerns if any, of BIAL, on this account, are unfounded.

#### **Tariff Determination done in Mumbai and Delhi Airports**

26.47 BIAL has, in its letter dated 15<sup>th</sup> April 2013, to the Hon'ble MoCA submitted that:

*"Ignoring specific provision of the AERA Act concerning provisions of CA is in contrast to the fact that the same Authority has considered provision of State Support Agreement and other concession documents, while determining tariff for Delhi and Mumbai Airports"*

26.48 The submissions of BIAL in this matter appear to indicate that since the Authority had taken into consideration the covenants of SSA/ OMDA in determining tariffs for Aeronautical services for Delhi and Mumbai airports (and considered 30% of Shared Revenue Till), it should likewise take into account the covenants of the Concession Agreement while determining tariffs for Bengaluru International Airport. According to BIAL, the services of CGF are Non-Aeronautical, according to the Concession Agreement. Secondly, BIAL has in its appeal before AERAAT taken a position that Concession Agreement "clearly implied Dual Till".

26.49 The Authority has elaborated its reasoning with respect to its tariff determination in Mumbai and Delhi airports extensively in its Order of aeronautical tariff determination in respect of Mumbai airport and the same are not repeated here. The Authority has given due consideration to the provisions of the AERA Act, the provisions of OMDA and SSA in determining tariffs for Delhi and Mumbai airports. It proposes to do the same while determining the tariffs for BIAL also. It may be mentioned en-passant that appeals have been filed before AERAAT against Delhi and Mumbai Tariff determination orders stating that the Authority should have followed Single Till Approach for these Airports also.

26.50 As far as treatment of CGF in the agreements vis-à-vis the provisions of the Act is concerned, the provisions of Act or any Statute take primacy over any other contractual agreement. Hence the question of giving primacy to a contractual agreement over the provisions of the Act does not arise.

The Authority has accordingly determined the charges for the provisions of these services namely, CGF. The Authority has followed the same approach with respect to Mumbai and Delhi also where the services of Cargo and Ground Handling were categorised as “Non Aeronautical” according to OMDA signed between the GoI and DIAL/ MIAL and yet the Authority has determined the charges for the same in accordance with their definition as “Aeronautical Services” under AERA Act.

### **The alleged flawed reasoning by AERA**

26.51 BIAL has made the following submission in its letter dated 15<sup>th</sup> April 2013 to Hon’ble MoCA with respect to its interpretation of Section 13(1)(a)(v):

*“Another reasoning adopted by AERA, which again is flawed, is that AERA Act, 2008 vide Section 13 (1 )(a)(v) stipulates that while determining tariff for aeronautical services it should take into consideration "revenue receipt from services other than the aeronautical services", but this reasoning totally ignores provisions under same Section 13 (1)(a)(vi) which mandate Authority to take into consideration the concession offered by the Central Government in any Agreement or Memorandum of Understanding or otherwise. Even under Section 13 (1)(a)(v) there is no mention of all revenue receipts. If AERA interpretation is correct then the question comes what happens to expense on services other than aeronautical services. Is it possible to consider all revenue receipts and ignore expenses altogether? It is humbly submitted that such interpretation will lead to an incongruous situation where revenue receipts go to subsidise aeronautical charges and expense are borne by the airport. Hence, even AERA Act provisions when refer to revenue receipts it implies not all revenue receipts.*

26.52 According to the above interpretation of BIAL, the Authority cannot take into consideration “revenues received from services other than aeronautical services on the ground that, as BIAL has put it, “what happens to expenses on services other than aeronautical services”. BIAL has further posed the question “is it possible to consider all revenue receipts and ignore expenses altogether?” It then deduces that “such interpretation will lead to incongruous situation where revenue receipts go to subsidise aeronautical charges and expenses are borne by the airport. Hence even AERA Act provisions when refer to revenue receipts, it implies not all revenue receipts”.

26.53 The Authority notes that the interpretation of BIAL, if accepted, would render a clear and express provision (viz. taking into consideration *the revenue received from services other than the aeronautical services*) nugatory on account of an imaginative inference based on an absent provision (viz. *expense on such services*). The Authority notes that in the State Support Agreement in respect of Delhi and Mumbai Airports it is expressly provided that in 30% shared revenue till, the costs in relation to such revenue shall not be included while calculating Aeronautical charges. Hence, taking

only the revenues but not the costs does not appear to be incongruous. Absence in Section 13(1)(a)(v) regarding the expenses associated with generation of revenues from services other than aeronautical, can also reasonably mean that the Authority may take no such expenses or all such expenses or only a part thereof while determining aeronautical charges. The Authority, on balance, has taken, in its calculation, all the expenses associated with “services other than aeronautical” while determining Aeronautical charges if it finally decides to adopt Single Till.

26.54 Apart from the above, the Authority has noted that, clause (v) of Sec 13(1)(a) requiring the Authority “to take into consideration the revenue received from services other than the aeronautical services” did **not** appear in the initial bill of AERA Act that MoCA introduced in the Lok Sabha on 5<sup>th</sup> Sept 2007. When the Bill was referred to the Department related Standing Committee, the Standing Committee made a recommendation that “...*The economies of airport operation depend on both revenue streams i.e., aeronautical revenue and non-aeronautical revenue..... and Government may amend the Bill in order to include non-aeronautical services in the ambit of the Bill*”. In response, the Government stated that “*it is important to notice that internationally major airports earn bulk of their revenues through non-aeronautical stream. This enables them to moderate the aeronautical charges. In India also, there is an increasing realization that the non-aeronautical revenue has to increase so that core airport user, i.e., airlines, passengers and cargo facility users do not have to bear high aeronautical charges. Keeping this in view it is felt that one of the factors relevant for consideration to determine the tariff for the aeronautical services could be the **revenue generated by the subject airport operator through non aeronautical stream** (emphasis added).*” Accordingly, following clause was added in Section 13 (1) (a) of the Bill by way of official amendments:

*“(v) Revenue received from services other than aeronautical services”.*

26.55 The intention of the legislature clearly was not only to regulate the non-aeronautical services but express recognition that *the economies of airport operation depend on both revenue streams i.e., aeronautical revenue and non-aeronautical revenue*. The government’s response also clearly stated that in order that the airport users do not have to bear high aeronautical charges, “*one of the factors relevant for consideration to determine the tariff for the aeronautical services could be the **revenue generated by the subject airport operator through non aeronautical stream.***” The Government had thus put the passengers’ interest firmly in focus while moving the official amendment accordingly.

26.56 BIAL has also given its interpretation of the words “Revenue from Services other than Aeronautical” as follows:

*Section 13(1)(a)(v) provides for consideration of revenue received from services other than aeronautical services. The provision does not indicate that **all** revenue must be included.*

*Additionally, the proviso to Section 13(1)(a) indicates that any or all of the considerations specified in Section 13(1)(a) (i) to (vii) can be considered for determining different tariff structures for different airports. These two features visibly indicate that the AERA Act does not mandate a Single Till approach. Instead, the AERA Act provides the leeway to the Authority to apply appropriate mode of regulation, keeping in mind the factors prescribed in Section 13(1)(a)(i) to (vi).*

26.57 The Authority had examined the provisions of Section 13(1)(a)(v) in its Airport Orders dated 12<sup>th</sup> January 2011. BIAL has interpreted the Section 13(1)(a)(v) to mean that “all” revenue from services other than aeronautical need not be considered by the Authority while determining Aeronautical tariffs. Simultaneously, the Authority notes that BIAL has also stated in different for a (its appeal before AERAAT, its letter dated 15<sup>th</sup> April 2013 to the Hon’ble Minister, MoCA, its submissions before the Authority) that according to it (a) the Concession Agreement should be adhered to and (b) the Concession Agreement implies “Dual Till”. Read with this stated position of BIAL, its above submission would mean that since AERA Act does not use the wording “all” revenue, in fact, the Authority should take into account “no” revenue from services other than aeronautical. The Authority however does not consider that this would be the true interpretation of BIAL. Regarding “leeway to the Authority to apply appropriate mode of regulation keeping in mind the factors prescribed in Section 13(1)(a)(i) to (vi)”, according to the Authority, its approach towards appropriate mode of regulation would balance the reasonable interest of both the Airport Operators with those of the Airport users (defined as Passengers and Cargo facility users in AERA Act).

26.58 That apart, the Authority notes that, Black’s Law dictionary (9<sup>th</sup> Edition) defines “revenue” as “gross income”. *For a company, this is the total amount of money received by the company for goods sold or services provided during a certain time period.*

26.59 According to Collins Dictionary<sup>16</sup>, Revenue is defined as “*The gross income from a business enterprise, investment, property, etc.*”

26.60 The Authority notes that the Merriam-Webster dictionary defines “Revenue” as:

*“1: the total income produced by a given source a property expected to yield a large annual revenue*

*2: the gross income returned by an investment*

26.61 The Authority, thus, has in its calculations under Single Till taken the (Total) Revenue from Services other than Aeronautical in respect of BIAL. Based on the above mentioned considerations, the Authority had also come to the conclusion that Dual Till that does not take into account any revenue from Services other than Aeronautical Services is not in consonance with the provisions of

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<sup>16</sup> <http://www.collinsdictionary.com/dictionary/english/revenue>

AERA Act. In its submissions before the AERAAT, BIAL has stated that its Concession Agreement “clearly implies” Dual Till. From the above submission of BIAL, it would appear that it would like the Authority to use what according to BIAL is the “leeway” to apply appropriate mode of regulation, in adopting a Dual Till approach. The Authority does not find this line of reasoning tenable. The Authority believes that if at all it is required to use the “leeway” it should in the reasonable interest of the passengers, balancing it however with the interest of the Airport Operator.

### **Change in Law**

26.62 BIAL has, in its submission stated that any changes to the Regulated Charges section by the Regulatory Authority will trigger a change in law (pursuant to the Concession Agreement) and that BIAL would be entitled to compensation. As far as the provisions of the Concession Agreement are concerned, the Authority does not find any warrant against its approach of Single Till were it to finally adopt the same. The Concession Agreement does not indicate that income from Non Aeronautical Services should not be taken into account in determination of Aeronautical tariffs. Furthermore, as far as CGF is concerned, the Authority finds that these are expressly included in Part I of Schedule 3 which gives out a list of “Airport Activities”. As has been also mentioned elsewhere, the concession agreement also explicitly refers to the IRA that is set up to regulate “**any aspect** of airport activities”.

26.63 As per “Words and phrases legally defined” (4th Edition, Lexis Nexis) “any” is “a word with very wide meaning and prima-facie the use of it excludes limitation”. It further states that “any” is a “word which ordinarily excludes limitation or qualification and which should be given as wide a construction as possible”. Further “Supreme Courts words and phrases by Surendra Malik and Sumeet Malik” states that “any” has the following meaning “some; one of many; an indefinite number”. Determination of charges for items included in “Airport Activities” would thus fall under “any aspect” of the said Airport Activities, with wide interpretation of the word “any”. Hence, determination of charges for “Airport Activities” is embodied within the framework of the Concession Agreement itself.

26.64 The Authority also notes that under Section 2(a)(vii), Aeronautical Service means “*any service provided for a stakeholder at an airport for which the charges, in the opinion of the Central Government for the reasons to be recorded in writing may be determined by the Authority*”. The Act also defined Stakeholder in section 2(o) of the Act. Hence, if the Central Government were to expand the scope of remit of the Authority to include some item that is included in Part I Schedule 3 – Airport Activities of the Concession Agreement, as an Aeronautical Service, the Authority would be required to also regulate such a service (including if relevant, determining its charges). This scheme of things is also contemplated within the framework of the Concession Agreement itself.

26.65 The Authority has been established under AERA Act by the Parliament. The Act also specifies

CGF as Aeronautical Services (that are expressly listed as Airport Activities). The Authority's determination of charges for these activities therefore, is not contrary to the provisions of the Concession Agreement and hence cannot constitute a change of law.

**Bridge Link Advisors' Report as referred to by BIAL**

26.66 **Level Playing Field Argument:** M/s BIAL has relied on the level-playing field argument that was advocated by M/s BridgeLink Advisors to suggest a 30% shared revenue till in respect of private Greenfield airports. The Authority had analysed this argument in detail and gave its comments to MoCA vide its letter dated 6<sup>th</sup> September 2010.

26.67 As far as the issue of level playing field for private Greenfield airport is concerned, the Authority had given its reasoning that 30% shared till in Brownfield Airports of Mumbai and Delhi cannot be taken as a benchmark for Greenfield Airports. This is because, what is important to consider in any discussion of Shared or Hybrid Till are the amounts of non-aeronautical revenues finally remaining in the hands of the airport operator.

26.68 In case of Delhi and Mumbai, apart from 30% of the revenue share that is to be reckoned towards calculation of aeronautical tariffs, 46% of non-aeronautical revenue in Delhi and 39% in Mumbai are to be given to the AAI by the respective airport operators. These percentages of revenue share are not to be regarded as a cost pass through in regulatory accounts. Not only that, the expenses incurred in providing the 30% of Non-aeronautical revenues that is reckoned towards determination of Aeronautical charges are also not to be factored as a cost pass through.

26.69 This means that 76% of the total non-aeronautical revenue in Delhi and 69% in Mumbai go out of the hands of the airport operator to (a) defray airport charges and (b) to the AAI. On the other hand, in case of Bengaluru International Airport, revenue share that the airport operator is required to give to GoI is 4% and that too is deferred for 10 years (upto 2018-2019) and furthermore this 4% is also regarded as a cost pass through.

26.70 Hence in case of DIAL/ MIAL, between 76% to 69% of the non-aeronautical revenue is effectively taken out from the hands of the Airport Operator. If the expenses that Delhi and Mumbai airports incur in providing the non-aeronautical services is further considered, the amounts left in the hands of the airport operator on account of non-aeronautical income generated at the airport would be much less than 24% or so in Delhi and 31% in Mumbai. According to BIAL's submission, the costs associated with generation of Non-Aeronautical Revenue are around 50% or so.

26.71 The comparable level playing field argument, if accepted, would similarly require at least corresponding percentages of Non-Aeronautical Revenue to be taken out from the hands of BIAL with similar treatments with regard to costs associated with them. Hence, if the cost associated with generating these non-aeronautical revenues are also not to be factored as a cost pass through, it

would mean that such costs would also not be available to BIAL for the purposes of calculation of Non Aeronautical Revenue available with it. The Authority also notes that BIAL in its submission before AERAAT has stated that its Concession Agreement “clearly implies” Dual Till. On balance therefore, the Authority is not persuaded to accept that 30% shared revenue till should be followed for BIAL on the ground of “Level playing field”

26.72 The Authority also notes BIAL indicates, quoting from the report of Bridge Link Advisors that “the level of 30% share has been considered on the basis of consideration used in the State Support Agreements for Mumbai and Delhi Airports. BIAL appears to now infer that it should also be governed by the 30% Shared revenue till, as was done in case of Delhi and Mumbai Airports. The Authority notes that the concession agreement of BIAL was signed on 5<sup>th</sup> July 2004. The Authority has taken into account the various provisions of the Concession Agreement and has analysed the implications of Single Till and Dual Till on Aeronautical Charges (including UDF). It therefore feels that selectively taking into account only one provision (viz. 30% shared revenue till) in SSA/OMDA (without regard to the other provisions contained therein, particularly those relating to the revenue share to AAI at 46% in case of Delhi and 39% for Mumbai) and thereafter drawing inferences from a such a later agreement (OMDA was signed in 2006) is not warranted. Provisions of an agreement signed after BIAL’s Concession Agreement cannot be imported into the Concession Agreement of BIAL. Doing so will be altering the conditions of grant of the concession post signing of the Concession Agreement apart from the 30% shared revenue. The Authority has also analysed the differences between the Concession Agreement of BIAL with those in Delhi and Mumbai.

26.73 **Comparison of Project Agreements of DIAL/ MIAL and BIAL:** The following table summarises the differences between DIAL/ MIAL –Vs- BIAL

**Table 131: Comparison between Project Agreements of DIAL/MIAL and BIAL**

Item	DIAL/MIAL	BIAL	Remarks
Airports coming up within a 150 kms of aerial distance	New airport permitted, but DIAL/ MIAL have a right of first refusal within an aerial distance of 150 kms and can match the acceptable bid within 10%.	Blanket embargo on any domestic or international airport coming up within the aerial distance of 150 kms (except for Mysore and Hassan Airports)	Insulation of BIAL from future competition is far greater than what obtains for DIAL/MIAL.
Structure of Tariff determination	SSA contains detailed formula for determination of aeronautical tariff.	No such formulae given in Concession Agreement, except the statement for adherence to ICAO policies.	

Item	DIAL/MIAL	BIAL	Remarks
Regulatory Till - 30% shared Revenue	30% shared revenue was a bidding parameter on which the revenue share by the airport operator to AAI was compared. The proportionate expenditure incurred to generate 30% of Non-Aeronautical revenue however, is not to be considered as a cost pass through for tariff determination.	No such bidding parameter nor any mention of 30% shared revenue or any other such percentage.	
Revenue share treatment	46%/ 39% of the Gross Revenue to be given as revenue share to AAI (DIAL and MIAL respectively) not allowed as a cost pass through. AAI is thus compensated for loss of revenue on account of transfer of these Airports to Private Operators.	4% of the Gross Revenue to be paid as Concession Fee to Gol. This is a cost pass through and also deferred for the first 10 years from the Airport Opening date (24 <sup>th</sup> May 2008). AAI is not compensated for loss of revenue on account of closure of the existing HAL Airport. (Refer Para 13.34.1 above)	The % as well as treatment of the revenue share for DIAL/ MIAL and that of BIAL are entirely not comparable.
Agreement signing date	Agreement signed in 2006	Agreement signed in 2004	Since the agreement of BIAL pre-dates those of DIAL/MIAL, BIAL's Concession Agreement cannot be compared.



Item	DIAL/MIAL	BIAL	Remarks
Land Lease Deed	<p>Clause 2.1 of the Lease Deed makes it clear that land is granted for “the sole purpose of the Project and for such other purposes as are permitted under this lease deed. The ‘Project’ is defined as “the design, development, construction, finance, management, operations and maintenance of the airport as provided for under OMDA.” In the Lease Deed, therefore, financing the project, namely the Airport, is the <u>sole</u> purpose.</p> <p>The Authority notes that around 45 acres were commercially exploited for the purposes of financing of phase-I of Delhi airport yielding Rs. 1471 crore. Similarly, MIAL has also proposed to commercially exploit around 28-30 acres of land to generate Rs. 1000 crore. The remaining land permitted for commercial exploitation in Delhi would be used for future phases till 2026.</p>	Lease Deed in respect of BIAL has express provision that the land in excess of the airport requirements has been given to make the project (airport) feasible.	Lease Deed Agreements expressly provide that the excess land is to be used for the purposes of Airport.
Labour	OMDA prescribes that AAI manpower will be absorbed upto 60%. For those not absorbed, the retirement compensation is to be paid by DIAL/ MIAL to AAI.	No such provision.	Upon closure of the existing HAL airport at Bengaluru and consequent opening of Airport at Devanahalli the staff at HAL airport remained with AAI.
Financing of Project	Clause 13.1(a) of OMDA states that DIAL/ MIAL shall arrange for financing and/or meeting all financing requirements through suitable Debt and Equity contributions .....	The concession agreement expressly provides use of UDF, for, inter alia funding Capital Expenditure. The state Support agreement with GoK states that BIAL will receive Interest Free loan of Rs. 350 crores of which Rs. 335.5 Crores	Reflecting the nature of the airports, DIAL/ MIAL are regarded as Brownfield Airports and BIAL a Greenfield one.

Item	DIAL/MIAL	BIAL	Remarks
		was disbursed (that is more than the Initial Equity of Rs. 284.6 crores provided by the Private Promoters)	
Quality of Service Parameters	Prescribed in Chapter IX of OMDA, for Objective and Subjective Service quality requirements, ISO Certifications etc. Prescribes penalties for not adhering to standards at given percentages. Penalty amount to go to AAI.	Prescribed in Article 9.2 of Concession Agreement (substantially different from OMDA). Penalties in the form of Liquidated damages on account of drop in performance to be mutually discussed and to be deposited in Airport Development Fund. Monies from this fund to be utilized to fund improvements at the airport at the Direction of the GoI.	Prescriptions of standards for quality of service different for DIAL/ MIAL vis-à-vis BIAL.

26.74 The above table would bring out some of the differences in the Project structures including quality of service standards of BIAL as contrasted with those of DIAL/ MIAL. This comparison is made only with the objective that while structuring these projects, the Government had taken into account both the special characteristics and requirements of these airports. It would therefore now be not correct to select only one element namely “30% revenue share” to be applied also to BIAL in the name of “level playing field”. As has been explained by the Authority, in addition to 30% revenue share, additional percentages of Revenues including “Non Aeronautical Revenues” - 46% (Delhi) and 39% (Mumbai) are required to be paid by the Private Airport Operator to AAI without being treated as a cost pass through. These percentages are much larger than 4% Concession Fee payable by BIAL to GoI and that too, is a cost pass through and in addition is also deferred for the first 10 years of Airport Operation.

26.75 In its submissions immediately following the reference to the “Level playing field” at 30% shared revenue till, BIAL has stated that *“our humble request is that provisions of CA need to be honoured by the Authority”*. It would appear to the Authority by the above, that, BIAL is now requesting that instead of Dual Till, the Concession Agreement “implies” 30% Shared Revenue Till. The Authority however notes that BIAL, in its appeal before AERAAT had argued that the Concession Agreement contemplates Dual Till. It had not mentioned the concept of “level playing field” at 30% Revenue share in its submissions before AERAAT. The stand of BIAL before the AERAAT is thus not in consonance with that in the current submission, if it argues in favour of a “Level Playing field” at 30%

Share Revenue Till being consistent with the Concession Agreement.

26.76 **Risk Reward Considerations (Greenfield Risk):** Recommendation of the M/s BridgeLink Advisers relied upon by BIAL is to treat revenues from cargo and Ground Handling services as part of Non-aeronautical revenues. The reason that M/s BridgeLink Advisers gave is that *“it must be noted that giving fee share arrangement at these airport (BIAL) this will be fair in the context of the risk – reward considerations for investors given that they were subject to Greenfield risk during the development of these airports”*.

26.77 BIAL in its appeal before the AERAAT has averred that

*The Authority has failed to appreciate that the ISPs are sub-contractors and consequently agents of the Appellant – Principal and the Authority could not have regulated such agents directly.*

26.78 The Authority notes that Cargo and Ground Handling services are defined as Aeronautical services under AERA Act. Going by BIAL’s own averments before the AERAAT, BIAL would be regarded as a Principal providing these Aeronautical Services through its agents. Hence, the revenues generated by these Aeronautical services provided by BIAL would need to be reckoned as having accrued to it. These revenues in the hands of BIAL would thus need to be treated as “Aeronautical Revenues”. The Authority has calculated the financial implication of this approach of BIAL taken before AERAAT separately. Under this approach, the Authority would be unable to accept the recommendation of M/s Bridge Link to treat the revenues from CGF as Non-Aeronautical revenues.

26.79 The above position apart, as far as the “Greenfield Risk during the development of this airport” is concerned, the Authority notes that the initial promoters, namely, M/s Unique, M/s L&T and M/s Siemens as well as the State Promoters (GoK and AAI) could be said to have been exposed to the Greenfield risks during the development of these airports. The GoI as well as GoK had extended large number of risk mitigating measures that the Authority has outlined in Para 13.33 above. Furthermore, by grant of Adhoc UDF, effective 24<sup>th</sup> May 2008, the GoI had effectively mitigated the risks faced by BIAL. At any rate, the development stage was over by May 2008 when the Airport commenced its commercial operations. Thereafter, the new promoters namely the GVK Group acquired substantial stake in the company and is now the largest shareholder. The observations made in Bridge Link Advisers report regarding “Greenfield Risks” do not appear to be relevant any longer.

26.80 Airport Beta captures only systematic risks and not project specific risks. Secondly, if there were certain such Greenfield risks, the capital structure of the company should reflect such assessment of risk in having higher proportion of equity than the existing 70:30 structure. Thirdly the GoK, by giving interest free loan of Rs. 335.5 crores has considerably mitigated the capital financing

risk of the airport in question. GoK has also invested heavily on other supporting infrastructure at the airport. It has also acquired land in excess of the airport requirement and stipulated that such excess land can be used for Non-Aeronautical activities expressly to make the airport project feasible.

26.81 The current largest shareholder, namely, M/s GVK has acquired the stake in M/s BIAL in and around 2010 when the airport had already completed its development stage, commenced operations on 24<sup>th</sup> May, 2008 and was in successful operation. M/s BIAL had cash profits of Rs 16 Crore from first year of its operations, namely, 2008-09 itself. The new largest stakeholder, namely, GVK has also apparently seen the potential in BIAL airport and purchased stake in it at around 10 to 12 times the book value of the shares. These actions are not reflective of a perception of a high Greenfield risk.

26.82 The Government had also agreed to close down the functioning at the then existing airport popularly known as HAL Airport so that the new (Greenfield) airport is assured of traffic from the date it starts its operations.

26.83 The Government has also committed not to permit a civilian airport with the aerial distance of 150 kms with the exception of Mysore and Hassan that were already been sanctioned and that the airports of Mysore and Hassan can only operate as domestic airports and not international airports. This removed any traffic risk that could have been perceived at that point of time. In his article "Airport policy in Australia and New Zealand: Privatisation, light handed regulation and performance, Paper for Conference viz. Comparative Political Economy and Infrastructure Performance: Case of Airports; Fundacion Rafael del Pinto, Madrid, September 18-19,2006" Prof. Forsyth points out that "*there is no viable alternative airport within 150 km- the airline simply has no alternatives*". The Authority notes that according to Prof Forsyth, a distance of 150 kms is considered adequate to rule out any viable alternative to Bengaluru International Airport. The MoCA has prescribed that no civil airport will come within 150 kms of airports like Bangalore and Hyderabad as well as Delhi and Mumbai. Secondly, alternative means of transport like high speed rail or roads may not provide adequate alternatives. This would then have a result of eliminating competition and should thus considerably lower the riskiness of the airport in question.

26.84 The Government, in 2009 also granted User Development Fee for enhancing the profitability of Bengaluru International Airport. It also prescribed that UDF can be used also for capital expansion, in addition to the revenue requirements of operating the airport.

26.85 The Authority, during the current tariff determination, is proposing to mitigate/eliminate the risks on account of traffic, Revenue from Non-Aeronautical Services, Operating Expenses and these, in the assessment of the Authority, mitigates the risks that airport faces and a large part of the risk is transferred from the airport entrepreneur to the user, namely, primarily the passengers. The

recommendations of M/s BridgeLink Advisers would need to be viewed in this context and thus the Authority is unable to accept their assessment that Bengaluru International Airport faces at the current moment, any Greenfield risk.

#### **Letter of Prof. Gajendra Haldea**

26.86 BIAL, in its submission to the Authority and to the Hon'ble MOCA vide its letter dated 15<sup>th</sup> April 2013 has indicated Mr. Gajendra Haldea's letter detailing the approach to be adopted. Extract of the letter to Hon'ble MoCA is given below:

*"Even Mr. Gajendra Haldea, Advisor to Deputy Chairman of Planning Commission vide his Letter No.N-14033/3/2005-Infra dated 6th October, 2010 to Chairman, AERA in response to DO letter No. AERA/CH/2.21Till/2010/186 dated 8<sup>th</sup> September, 2010 of AERA Chairman, regarding the approach to be adopted for price cap regulation of airports has clearly favoured hybrid approach instead of Single Till. Detailed reasoning for the same has been provided by Mr. Haldea in the letter under reference. A copy of the letter is enclosed as Annexure 6.*

26.87 BIAL has in its submission to the Authority as well as its letter to the Hon'ble MoCA highlighted Mr. Gajendra Haldea's letter. Hence it would appear that BIAL wants the Authority to apply hybrid till in the determination of aeronautical tariff for Bengaluru International Airport. This request is not in consonance with its submissions before the AERAAT, where BIAL has stated that the Authority should adhere to the Concession Agreement and that Dual Till is implicit in the Concession Agreement. By its submission made, BIAL seems to feel that hybrid till is also consistent with the Concession Agreement, a position which is at variance with its appeal before the AERAAT. The Authority therefore has proceeded with the examination of the submissions made by the Airport Operator, which are under single and Dual Till.

26.88 The Authority has carefully examined BIAL's submission having reference to the letter from Mr. Gajendra Haldea. BIAL has inferred from the letter that Mr. Gajendra Haldea assigns a great importance to the choice of economic regulation in achieving the investment goals and also that he has advocated need for a hybrid till. In its proposals of tariff determination for BIAL, the Authority has considered both the interest of the Airport Users (defined as Passengers and cargo facility users as per the AERA Act) as well as those of BIAL. The Authority has followed the principles of transparency and consistency in preparing its approach for determination of aeronautical tariff for major airports. To ensure the same, the Authority has involved the stakeholders at various stages and considered the views expressed by them in developing its approach.

26.89 In context of BIAL, the Authority observes that out of the said budgeted cost of Rs. 2,470 crores, Private promoters has brought in the equity of Rs. 284.6 crores, which is about 11.5% of the

said project cost. In comparison to this, the GoK as well as AAI have supported through funding of Rs. 435 crores (Interest Free Loan of Rs. 335 crores from GoK and Equity of Rs. 100 crores – Rs. 50 Crores by GoK and Rs. 50 Crores by AAI). Additionally, reference is made to the deemed support given to BIAL by AAI / GoI in not requiring it to compensate for the loss of surplus on account of closure of the existing and profitable HAL Airport (vide Para 13.34.1 above). Thus it can be seen that while Private sectors' equity investment is around 13% of the said project cost, the GoK and AAI have supported the project through their funding of around 17.6% of the project cost (even without considering the deemed support mentioned in Para 13.34.1 above). Thus once the reasonable expectations of the Airport Operator in terms of fair rate of return are duly taken into account, the direct charges on the passengers should not be higher than what they need to be. The regulatory framework that balances the requirements of the Airport Operator and those of the Airport users is, in the assessment of the Authority most appropriate.

### **Real Estate Development**

26.90 BIAL in its submission (Para 26.1 above) has stated that

*“Under the State Support Agreement as well as the Concession Agreement, upon termination or expiry, BIAL has an option to continue to exercise leasehold rights with respect to either the CA Excluded Area or SSA Excluded Area, as the case may be. However, rest of the leased area is deemed to have been surrendered. The fact BIAL has an option to exercise leasehold rights with respect to certain portions of the leased land even without the right to operate the airport makes it apparent that leased land was provided to BIAL for the twin purposes of development of the airport and commercial utilization. As stated above, one of the objectives of providing leased land to BIAL for commercial utilization was to incentivize airport development and expansion.”*

26.91 The Authority notes that BIAL has acknowledged that, *“one of the objectives of providing leased land to BIAL for commercial utilization was to incentivize airport development and expansion”*. BIAL therefore has recognised the purpose of grant of land was both for airport development as well as its expansion. The Authority notes the Recital F of the Land Lease Deed as well as Clause 4.2 thereof whereby the purpose of land was to *“improve the viability of the Project and enhance the bankability of the Initial Phase”*. In this the words *“incentivize”* as mentioned in BIAL's submission in Para 26.90 above, do not however appear in the Land Lease Deed in the context of commercial utilisation of the land.

26.92 Furthermore, in its submission, BIAL has clubbed together two circumstances namely (a) **termination** (as a consequence of default) of Concession Agreement (with GoI) or State Support Agreement (with GoK) and (b) **expiry** of the term of these two agreements (after a period of 30

years or 60 years as the case may be). Clubbing these two separate circumstances together is in view of the Authority, an erroneous reading of the Concession Agreement, State Support Agreement and the Land Lease Deed. The Land Lease agreement also has provisions in clause 3 regarding “**TERM AND TERMINATION**”. According to the Clause 3.1 of the Land Lease Deed, unless this Deed is terminated prematurely in accordance with the provisions hereof, this Deed shall have a term, which will run concurrent with the term of the Concession Agreement. Accordingly, upon full expiration of the Concession Agreement (including any renewed term there under), this Deed shall terminate automatically

26.93 The Authority has given careful consideration to the above submission of BIAL. The Land Lease deed defines “CA Excluded area as “... *that portion of the Site containing those Non-Airport Activities not being taken over by GoI pursuant to articles 7.2 or 13.5.2 of the Concession Agreement.*” SSA excluded area is also defined in Land Lease deed meaning “... *that portion of the Site containing those Non-Airport Activities not being taken over by GoK pursuant to clauses 4.3 or 19.4.2 of the State Support Agreement*”.

26.94 The relevant portion of Article 7.2 of Concession Agreement reads as “*To the extent that BIAL incurs any capital investments, amounts or costs in relation to the provision of Non-Airport Activities and requires such investments, amounts or costs to be included in the calculation of the Termination Amount, Debt or Settlement Amount, BIAL shall seek the prior written consent of GoI.*” Similarly, the relevant portion of Clause 13.5.2 of the Concession Agreement reads as “*Notwithstanding anything contained in Article 13.5.1, prior to any transfer of the Airport, GoI shall have the right conduct a due diligence of the contracts and agreements pertaining to Non-Airport Activities, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of GoI are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. GoI shall conduct the due diligence and identify the contracts and agreements that it is prepared to assume within 45 days of the opening of a data room by BIAL for these purposes following the exercise of a right of termination by GoI or BIAL under Article 13.4. For the avoidance of doubt, to the extent GoI opts to take over Non-Airport Activities, which have not been approved by GoI in accordance with Article 7.2, the calculation of Termination Amount or the Settlement Amount shall include investments, amounts or costs of such Non Airport Activities.*”

26.95 The relevant clauses of the State Support Agreement are with reference to the GoK with similar wordings.

26.96 The Authority has considered various clauses regarding termination of lease in the Land Lease Deed. The Authority notes that “Site” is to have meaning assigned to it in Clause 2.1, namely, what is indicated in Schedule ‘A’ of the Land Lease Deed. All in all, the ‘Site’ comprises of an area of

4008 (Land Lease Deed dated 30<sup>th</sup> April, 2005 for 3884 acres and additional Land lease deed dated 31<sup>st</sup> December 2011 for 124 acres).

26.97 Clause 3 of the Land Lease Deed is regarding term and termination of the said deed. The Authority, upon reading of Clause 3.7 of the Land Lease Deed, understands that in the event of termination of the land lease deed under normal conditions (including the full term expiration of the Concession Agreement), the BIAL shall handover possession of the site to KSIDC without any encumbrances immediately upon such termination. The question of SSA excluded areas is addressed in Clause 3.4 of the Lease Deed (that incidentally is not mentioned in Clause 3.7 mentioned above).

26.98 Clause 3.4 of the Land Lease Deed provides that *“in the event that the Airport is transferred to GoK in accordance with the provisions of Clause 19.4 of the State Support Agreement then upon such transfer, BIAL shall be deemed to have surrendered the Site (with the exception of the SSA Excluded Area) and this Deed shall terminate with respect to the surrendered part and KSIDC shall be at full liberty to deal therewith in the manner it chooses. With regard to the SSA Excluded Areas, KSIDC and BIAL will meet to settle the commercial terms for the continuance of the lease in respect of the SSA Excluded Area and KSIDC shall ensure that BIAL has the rights of access necessary for access to the SSA Excluded Area. While settling the commercial terms so as to enable the continuance of the Lease in respect of the SSA Excluded Area, the Parties shall bear in mind the then prevailing policies / guidelines of GoK that are applicable for similar activities as are being undertaken on the SSA Excluded Area. Upon the determination of the commercial terms, BIAL shall pay to KSIDC any Lease Rent arrears for the SSA Excluded Area, calculated from the date of surrender of the Site. Until the determination of the commercial terms, BIAL shall pay the Lease Rent for the SSA Excluded Area in accordance with the policies / guidelines of GoK prevailing at that point of time with respect to the particular activity, and such payment of Lease Rent shall be at a rate not less than that mandated by the policy/guideline of GoK prevailing at that point of time with respect to that particular activity. If the Parties do not reach an agreement on the commercial terms within a period of one (1) year of the surrender of the Site, then the matter shall be referred for determination of an Independent Expert mutually agreed between the Parties. The determination of the Independent Expert shall be final and binding on the Parties.”* The Clause 19.4 mentioned in the State Support Agreement is not with respect to the expiry of the State Support Agreement but with respect to the termination as consequence of default upon relevant parties (GOK and BIAL).

26.99 Similarly, Clause 3.5 as corresponding provision regarding the airport being transferred to GOI in accordance with the provisions of Article 13.5 of the Concession Agreement. The Clause 3.5 of the Land Lease Deed states that *“in the event that the Airport is transferred to GoI in accordance with the provisions of Article 13.5 of the Concession Agreement, then upon such transfer, BIAL shall be deemed to have surrendered the Site (with the exception of the CA Excluded Area) and this Deed*



*shall terminate with respect to the surrendered part and KSIDC shall be at fully liberty to deal therewith in the manner it chooses. With regard to the CA Excluded Area, KSIDC and BIAL will meet to settle the commercial terms for the continuance of the lease in respect of the CA Excluded Area and KSIDC shall ensure that BIAL has the rights of access necessary for access to the CA Excluded Area. While settling the commercial terms so as to enable the continuance of the Lease in respect of the CA Excluded Area, the Parties shall bear in mind the then prevailing policies / guidelines of GoK that are applicable for similar activities as are being undertaken on the CA Excluded Area. Upon the determination of the commercial terms, BIAL shall pay to KSIDC any Lease Rent arrears for the CA Excluded Areas, calculated from the date of surrender of the Site. Until the determination of the commercial terms, BIAL shall pay the Lease Rent for the CA Excluded Area in accordance with the policies / guidelines of GoK prevailing at that point of time with respect to that particular activity. If the Parties do not reach an agreement on the commercial terms within a period of one (1) year of the surrender of the Site, then the matter shall be referred for determination of an Independent Expert mutually agreed between the Parties. The determination of the Independent Expert shall be final and binding on the Parties".* Article 13.5 of the Concession Agreement also refers to not the expiry upon completion of the term under Concession Agreement but to consequence on account of default either by Gol or BIAL. Furthermore, Clause 3.7 of the land Lease Deed provides that in the event of termination of this Deed pursuant to the provisions of Clause 3.1, 3.2 and 3.3, BIAL shall hand over the possession of the site to KSIDC without any encumbrance immediately upon such termination.

26.100 The Authority, therefore, infers that the question of the SSA excluded areas or for that matter the CA excluded Areas arise in respect termination or in case of default and not in normal expiration of the term. The Authority notes that the CA excluded area or SSA excluded area specifically refer to Non-Airport activities. Furthermore, the Authority notes that clauses 13.5.2 of the Concession Agreement as well as 19.4.2 of the State Support Agreement refer to the circumstance of exercise of a right of termination by Gol, GoK or BIAL as consequences of default by relevant party and not on expiry of either the Concession Agreement or the State Support Agreement.

26.101 The Land Lease Agreement, in its recitals, states that:

26.101.1 A. The Govt. of India, as part of its policy to encourage private sector participation in the development of airport infrastructure has granted it's in principle approval for the development of Greenfield airport, with private sector participation, at Devanahalli, near Bangalore in the State of Karnataka.

26.101.2 B. GoK, granting approval for the development of Greenfield airport at Devanahalli as part of its policy to encourage and provide industrial development, tourism, cargo movement and

the general economic and social development of the State of Karnataka, has granted approval for the development of the Greenfield airport at Devanahalli, near Bangalore.

26.101.3 C. BIAL has been established for the development, design, financing, construction, completion, maintenance, operation and management of the airport.

26.102 Recital 'F' refers to the representations made by the private promoters during the pre-detailed proposal stage of the bidding process. In response thereto, as stated in Recital 'F', "*Govt. of Karnataka has agreed to provide financial support to improve the viability of the project and enhance the bankability of the initial phase and has also agreed to have KSIIDC to provide the site on lease to BIAL.*"

26.103 Recital "G" states that "*Accordingly, GoK through its various organisations and departments has acquired and has otherwise made available the Site South of Devanahalli near Bangalore for the Project and has the same vested with KSIIDC*"

26.104 The '**Private Promoter**' has also defined to mean Siemens, Unique (Zurich) and L&T and such other party as may from time to time be agreed pursuant to the Shareholders' Agreement. The 'Airport' is defined as to mean "*the Greenfield international airport comprising of the initial phase to be constructed and operated by BIAL at Devanahalli,...*". The "initial phase" is stated to have the same meaning as in the State Support Agreement. The State Support Agreement defines the initial phase as "*means design, financing, construction, completion and commissioning of the facilities described in Schedule 5 attached hereto*". Schedule 5 correspondingly gives the description of the initial phase of the airport with respect to its location (4008 acres), taxiways, apron, airside service roads, main access road, air traffic control, airfield lighting and other items pertaining to the Airport. The time horizon of the Initial Phase, as per Annex 1 of the Master plan is between 2006 and 2025.

26.105 The Lease Agreement also indicates the purpose for which the site may be used as follows:

***"4. Use of the Site***

*4.1 KSIIDC hereby grants permission and consent, to BIAL to use the Site, and BIAL agrees to use the Site in accordance with the Master plan, for the carrying out of the Activities and the following:*

*a) implement the project;*

*b) development, constructing, building, owning, operating and maintaining the Airport;*

*c) designing, building, owning, operating and maintaining the utilities, services and facilities required for operating and maintaining the Airport;*

*d) designing, building, owning, operating, maintaining and using office, management, administration facilities including all infrastructure required for such facilities and canteen facilities;*

*e)Implementation of plans for expansion, modernization or renovation of the Airport or utilities and services facilities;*  
*f)extraction of ground water and harvesting of rain water for BIAL's requirements;*  
*g)developing a greenbelt on the Site as specified in the Master plan; and*  
*h)developing and landscaping the Site;*  
*(the "Purposes")*

*4.2.BIAL may, with the approval of KSIIDC (such approval not be unreasonably withheld), in addition to the above Purposes, utilize the Site for any other purposes, which in its opinion is (i) conducive or incidental to implementation of the Project; and/or (ii) conducive or incidental to operation and management of the Airport; and/or (iii) enhances the passenger/cargo traffic at the Airport; and/or (iv) improves the commercial viability of the Project; and/or (v) facilitates substantive further investment in or around the Airport."*

26.106 The Authority notes that BIAL has agreed to use the site in accordance with the Master Plan and for carrying out of the activities which can be seen to be airport related. The Clause 4.2 above gives the liberty to BIAL, with the approval of KSIIDC, to utilize the site for any other purposes that are also indicated in the Land Lease Deed Agreement, as mentioned above. All these activities appear to be broadly in the nature of airport activities with the possible exception of item (iv), namely, *"improves the commercial viability of the Project" and/or (v) facilitates substantive further investment in or around the Airport."* The combined reading of all these clauses appear to the Authority to indicate that the primary purpose of lease of land to BIAL was to provide financial support and to improve the viability of the Project and enhance the bankability of the initial phase. Clause (iv) specifically states that the purpose has to be to improve the commercial viability of the Project. Clause (v), on which BIAL has relied also states that the purpose of land utilisation should be to *"facilitates substantive further investment in or around the Airport"*. The *"other purpose"* for which BIAL can utilise the land (with the previous approval of KSIIDC), will *"facilitate"* substantive further investment by BIAL himself, or what is more likely (noting the use of the word *"facilitate"*, by third parties. Such third parties would conceivably give to BIAL compensation for use of the land for the other purpose (the purpose that will have to be approved by KSIIDC). In any event, the purpose of land grant to BIAL is clearly specified in the land lease agreement and was not to give the land to BIAL without any restrictions or to be used in any manner that BIAL in its discretion may deem fit and further appropriate the proceeds to itself, without requiring it to have nexus to improve viability and bankability of the airport project.

26.107 Upon reading the entire provisions contained in the Land Lease Deed, Concession Agreement as well as the State Support agreement, the Authority does not find any conflict between

the provisions that BIAL can use the CA excluded or SSA excluded land after the termination of BIAL's right to operate the Airport (as a consequence of default by relevant parties, as well as commercial negotiations with KSIIDC as provided in Clause 3.4 and 3.5 of the Land Lease Deed) and the purpose of the grant of land to inter alia improve the viability of the Project and enhance the bankability of the initial phase (as stated in Recital F of the Land Lease Deed as well as Clause 4 of the Land Lease Deed) (also see Para 26.108 below). The Authority does not believe that the grant of land by KSIIDC to BIAL after acquiring the same (which would be in public interest) and at a rental of 3% to 6% per annum (which may be a concessional rate so that the public utility of Airport is facilitated) can be bereft of any linkage with the Airport project. Use of the land as indicated in clause 4.1 clearly is with respect to Airport activities. The commercial utilisation of land is provided in clause 4.2 and is subject to approval of KSIIDC and also underlines the aspect of improvement of commercial viability of the Airport and / or facilitating substantive further investment in or around the Airport.

26.108 The Authority has thus considered the land lease agreement from which it infers that the land has been leased to BIAL "to provide financial support to improve the viability of the Project and enhance the bankability of the Initial Phase." The Authority is addressing the issue of the revenues or receipts from the land only during the concession period because the regulations of Aeronautical Tariffs so far as it pertains to BIAL are relevant only during this period. After expiry of this period, the right of use of such lands (either the CA Excluded Area or SSA Excluded Area) is governed by Clause 3.4 of the Land Lease Deed which makes it clear that continued use of such lands by BIAL is not automatic and is governed by renegotiations including settling the commercial terms. The question of SSA excluded Area or CA excluded areas to remain in possession of BIAL even after it ceases to be the Airport Operator would arise only in the event of termination as a consequence of default by the relevant parties and that too if and only if GoK or GoI decide not to take over the Non-Airport activities in such areas. That apart, the use of lands under clause 4.2 of the Land Lease Deed clearly specifies that "if BIAL wants to utilise the Site for purposes other than mentioned in clause 4.1 (this clause is related to the Airport as such), it will have to take approval of KSIIDC." Furthermore, such other purposes (under Clause 4.2) also relate the use of land and the purpose of its utilisation clearly to the Airport, viz. to improve the commercial viability of the same and / or facilitating substantive further investment in or around the Airport. The Authority therefore infers that the land lease deed expressly requires the use of entire land (during the Concession Period) for the Project. Upon expiry or termination of the Concession, BIAL would cease to be the Airport Operator and hence, a regulated entity as far as AERA Act is concerned. During the Concession Period, however, the Authority has proposed to connect the use of land, receipts obtained therefrom with economic regulation of the Airport and nexus with the passenger charges through a mechanism of RAB reduction. The Authority has thus taken into consideration the Concession Agreement, the Land

Lease Deed as well as the State Support Agreement while proposing this treatment (viz. reduction from RAB) and has not ignored any of them.

26.109 BIAL, in its submission to MoCA dated 15<sup>th</sup> April 2013 has repeated its submission that any revenue from the development of airport does not come within the purview of the Authority due to the definition of Airport under Section 2(b) of the AERA Act and definition of "Aerodrome" under Section 2(2) which reads as follows:

*"airport" means a landing and taking off area for aircraft, usually with runways and aircraft maintenance and passenger facilities and includes an aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934 (22 of 1934).*

*"Aerodrome means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto"*

26.110 BIAL has also stated that:

*"The airport operator has been allowed to operate non-airport assets, even beyond the tenure of the agreement, which indicates that these assets are not to be viewed in conjunction with essential airport activities. Hence, the regulator should also recognize that the revenues accruing from these services should not be required to cross-subsidize aeronautical revenues, this is without prejudice to the fact that Non Airport Activities are outside the purview of AERA*

*Part 2 of Schedule 3 of CA lists Non-Airport Activities. Since these activities are very clearly recognised as Non-Airport Activities, hence, any move by AERA to reduce value of land used for such activities will be beyond its jurisdiction*

*Though land outside airport is outside the purview of AERA, assuming, without admitting, that even such land was within the purview of AERA even then under the AERA Act, reducing the notional value of land from RAB is not permitted, as only revenue from services other than aeronautical services could be considered while determining aeronautical tariff*

*Clause 4.2 of the Land Lease Deed provides that BIAL may utilize the leased land, inter alia, for (i) improving the commercial viability of the project; and / or (ii) such that the utilization facilitates substantive further investment in or around the airport*

*Land value adjustment as proposed by the Authority is the very antithesis of these objectives. If market value of the Land is deducted from RAB, BIAL would get little or no benefit from the lease of the land and resultantly, will not be able to utilize any income from utilization of such land to make the airport project more viable.*

*This objective of development of areas surrounding the airport is sought to be achieved under clause 4.2(v) of the Land Lease Deed. Land value adjustment would be a full and complete disincentive for the airport operator to utilize the land for facilitating further investment around the airport as BIAL would be virtually forced to buy land, which is already leased to it.*

*Real Estate Development and its revenue has to be ring fenced in real sense i.e. no cost and no revenue from such activities is to be considered while determining airport charges...”*

26.111 The Authority has considered the above submissions of BIAL with respect to the Land Lease agreement and other relevant documents. The Land Lease Agreement was signed between the Govt. of Karnataka and BIAL on 20<sup>th</sup> January, 2005. The Authority would have expected BIAL to give appropriate proposals for exploitation of land given to it by the GoK for the express purpose – “to improve the viability of the Project and enhance the bankability of the Initial phase and has also agreed to have KSIIDC to provide the Site on lease to BIAL”. The land is given for the Project that is defined as “designing, **financing**, construction, completion, commissioning, maintenance, operation, management and development of the Airport”, both in the Concession Agreement as well as the Land Lease Deed. The provisions of the use of the Site (Clause 4) of the Land Lease Deed also have express mention of the use of land for, inter alia, “conducive or incidental to implementation of the Project” as well as for “improving the commercial viability of the Project”. It is thus clear that both the Concession Agreement and the Land Lease Deed expressly link the grant of land to, inter alia, **financing** the Project. Even otherwise, convenient interpretation that the GoK would on one hand give financial support to improve the viability of the Project and on the other hand, permit the land acquired by the GoK through the legislative instrument of “Land acquisition Act” from private parties to be commercially exploited by BIAL merely as an “incentive” to develop and manage the Airport (without requiring the funds generated from such commercial exploitation for the purposes of Capital or for that matter revenue requirements for the Airport) appears to the Authority as unsupportable. The Authority notes however that instead of giving such a proposal of raising Capital through commercial exploitation of land, BIAL appears to interpret the provisions of the different agreements that there is no such linkage between grant of land and the financing, improving the commercial viability etc. of the Airport. It thus appears to have taken out only “financing” as well as “improving the commercial viability of the project” from the list of purposes for which the Site has been leased to it by KSIIDC. The Authority does not find this line of reasoning tenable.

26.112 The Authority under Section 13(1)(a)(i) of the AERA Act is required to determine the tariff for Aeronautical services taking into consideration “the capital expenditure incurred and timely investment in improvement of airport facilities” and under sub-clause (iv) economic and viable

operations of BIAL. Hence the Authority is proposing to ensure the viability of the airport though, as of now, no monies, either in the form of capital or in the form of revenue, have been forthcoming from the land that has been leased to BIAL with the express purpose of improving the viability and bankability. In other words, by operation of requirement of AERA Act, the viability and bankability of the Project is being proposed to be ensured and one of the primary legal instruments for so doing is the User Development Fee. It, therefore, appears to the Authority that any revenues obtained from commercial exploitation of land in excess of the Airport requirements are required to be ploughed back into the Airport project. Hence, to bring about the required nexus between grant of land and viability and bankability of the Airport, **that is mentioned in the various documents signed by BIAL itself with GoK as well as GoI**, one of the transparent methods was considered to subtract the fair value of the land that is used for commercial activities, from the Regulatory Asset Base.

26.113 This, in view of the Authority, would establish the nexus between the purpose of grant of land (to improve the project viability) and lowering the charges on the passengers. The Authority, in any case, is mandated to determine tariffs for aeronautical services (including amount of Development Fees) taking into consideration the economic and viable operation of the major airports. Hence, after determining such aeronautical tariffs (as well as UDF), the airport's viability would be ensured in terms of financial returns. Any amount obtained through commercial exploitation of land would then be over and above what is required for such economic viability or feasibility.

26.114 BIAL has also stated that:

*If market value of the Land is deducted from RAB, BIAL would get little or no benefit from the lease of the land and resultantly, will not be able to utilize any income from utilization of such land to make the airport project more viable.*

*This objective of development of areas surrounding the airport is sought to be achieved under clause 4.2(v) of the Land Lease Deed. Land value adjustment would be a full and complete disincentive for the airport operator to utilize the land for facilitating further investment around the airport as BIAL would be virtually forced to buy land, which is already leased to it*

26.115 From the above submissions, the Authority understands that BIAL is making two distinct and separate arguments (a) BIAL plans to use any income from utilisation of land for commercial exploitation to make the project viable and (b) BIAL plans to use income from commercial utilisation of land so as to facilitate further investment **around** the airport. (See Para 26.105 above)

26.116 As regards (a) the Authority notes that BIAL appears to have in mind to use the income from commercial exploitation of these land for the viability and bankability of the Project, but as of now, has not given any concrete proposal to do so, nor has it indicated the quantum of finances that

would be available from such a proposal to make the airport viable. The Authority is accordingly proceeding with the exercise of Tariff determination (including UDF) without taking into account any such revenues from commercial exploitation of land in the absence of any concrete proposal from BIAL. As and when BIAL firms up its proposals of commercial exploitation of land and informs the Authority, the Authority proposes to suitably consider the same and give effect to it while determination of aeronautical tariffs. BIAL's concern thus appears to be only regarding the mechanism viz. reduction of the fair market value of such lands from RAB. The reduction in RAB on account of land monetisation is only a mechanism to give effect to the nexus between grant of land in excess of the airport requirements made to BIAL and the express objective of such grant mentioned in the Lease Deed viz. to improve the project's (namely airport) viability.

26.117 As regards (b), the Authority notes that the relevant words of clause 4.2 of the Land Lease Agreement are "facilitates substantive further investment **in or around** the Airport". However, BIAL in its submission mentioned in Para 10.9 above has referred to only "facilitating further investment **around** the airport". Hence the concern of BIAL that if the Authority's makes land value adjustment, it would be a full and complete disincentive for the airport operator to utilize the land to make substantive further investments appears to be confined only to further investments **around** the airport and not to further investments **in** the airport. The Authority notes therefore that the intention of BIAL appears to be to exploit the land leased to it so as to facilitate substantive further investment **around** the Airport. This means that according to BIAL, one of the purposes of lease of land to BIAL is to enable BIAL to make "substantive further investments around the airport". The Authority notes that for doing so it requires the approval of KSIIDC as per clause 4.2 of the Land Lease Agreement. BIAL has not given any details of any proposal in this regard, requesting thereupon not to deduct the fair market value of the land that it wishes to commercially exploit so as to "facilitate substantive further investment **around the airport**". As and when BIAL submits such details, the Authority would be able to suitably consider the same. Hence the concern of BIAL regarding land value adjustment under clause 4.2 (v) of the Land Lease Agreement can be suitably considered after it submits appropriate proposal duly approved by KSIIDC to the Authority and thus appears to be unfounded.

26.118 The Authority does not consider it to be the objective of grant of excess land to the airport operator that he can get additional revenue over and above what is considered and determined as a fair rate of return. The land of around 4008 acres (Schedule 2 of the Concession Agreement) has been acquired by the State Govt. under the relevant provisions of Land Acquisition Act (and leased to the airport). The Authority notes that the rent for land is taken at 3% (to be increased to 6% of the cost from the eighth year) based on Rs. 175 crores which the Authority understands may be the acquisition cost under the Land Acquisition Act. The Authority thus understands that the rental does



not make distinction between different uses permitted on this land, namely, the airport activities and the other commercial activities (clause 4.2(v)). The Authority understands that land for commercial purposes is generally based on certain well-defined principles of disposal including that of auction and, at any rate, attracts a higher lease rental.

26.119 The lease rental, generally, varies depending on the user and is substantially higher than 3% (to be increased to 6% from the 8<sup>th</sup> year of operation viz. 24<sup>th</sup> May 2008) for any commercial exploitation. The Authority, therefore, reasonably concludes that the lease rental of 3% is on account of the land made available only for the stated public purpose like airport and further especially to make the airport feasible. As has been indicated above, the Authority has made the airport feasible primarily through UDF. Hence any receipts from the commercial exploitation of land outside the terminal building should also go to reduce the incidence of passenger charges namely UDF. In Authority's view, one of the definitive and transparent mechanisms of doing so is to reduce the value of land used for such commercial exploitation (outside the terminal building) from RAB.

26.120 Subtracting the fair market value of such lands under commercial exploitation from RAB is based on the Lease Deed signed between KSIIDC and BIAL. If the land in excess of the airport development is used for commercial exploitation but its benefit does not flow to the Airport, it is not clear to the Authority in what manner the excess land is to be understood to have been given to improve the airport's viability.

26.121 The grant of land is one of the elements of assistance to improve the project's viability. The "Project" is the development of airport which also is defined in the Lease agreement. One of the items that the Authority is required to take into consideration while determining aeronautical tariffs is "Revenue from services other than Aeronautical". This would indicate that under the AERA Act such revenues from services other than aeronautical can also to be taken into account while determining aeronautical tariffs.

26.122 **Summary of the arguments with respect to Real Estate:** Based on the above considerations, the Authority is summarising its analysis regarding the linkage between grant of land and the financing needs of the Airport (both Capital as well as Revenue) as under:

26.122.1 The land lease deed clearly states (Use of Land in clause 4.2) that the purposes of using the land include, inter alia, *"(i) conducive or incidental to implementation of the Project and (iv) improves the commercial viability of the Project"*

26.122.2 Project is defined to mean *"the design, **financing**, construction, completion, commissioning, maintenance, operation, management and development of the Airport"*. Hence, Land Lease Deed clearly links the financing needs of the Project with grant of land.

26.122.3 SSA excluded area or CA excluded area are only with reference to termination as a consequence of default by the relevant parties and not upon expiry of the term (after 30/60

years as the case may be). BIAL can use the SSA or CA excluded area (without being an Airport Operator) only in the event of GoK or Gol not choosing to take over the same, and that too after re-negotiation as per the then prevailing policy of GoK. Hence, the SSA / CA excluded areas have relevance only if there is an event of default.

26.122.4 The Authority therefore infers that mere provisions of SSA / CA excluded area in no way detract from the purpose of grant of land for financing the Airport Project.

26.123 Taking into account the above circumstances and noting that BIAL has submitted that their Real Estate Business Plan has not been finalised, the Authority does not propose to make any adjustments to RAB on this account during the current control period. It has therefore calculated the Aeronautical Tariff Proposals without such adjustment to RAB, both under Single and Dual Till and has presented the results thereof for Stakeholders' Consultations.

#### **Project Information Memorandum (Detailed Project Report)**

26.124 The Authority has also considered the contents of the Project Information Memorandum (PIM) referred to by BIAL in his letter dated 15<sup>th</sup> April, 2013 to Hon'ble Minister of Civil Aviation (as Annexure-3), which is given below:

*The project information memorandum that was shared with the bidders, at several points indicated that aeronautical and non-aeronautical services should be treated as distinct sources of revenue.*

*1. Part-II -Clause-1.2 para-1 on page 046, states that modern airports around the world have a substantial quantum of revenue from activities which are not directly linked to aeronautical services. This quantum varies from 50-70% at major airports in the world. The present proportion for non-aeronautical revenues at BIAL is close to 40%, much below the international level. It is clear that unless non-aeronautical revenues are allowed to develop independently, there is no incentive for the airport operator to increase the proportion as the upside would be subsumed by a reduction in the aeronautical tariffs.*

*2. Part-II -Clause-1.2 para-2 on page 046 states that non-aeronautical activities are expected to significantly augment the revenues from the aeronautical services*

*3. Part-II -Clause-1.4 sub clause-19 on page 048 highlights the fact that the airport shall have a distinct and significant commercial orientation to capitalize on the development potential of Bangalore and the region*

*4. Part II - Para 3.2 on, Page 052 clearly states that it is proposed that non-aeronautical operations shall form a distinct and significant component of the airport investment. It further states that land shall be optimally and innovatively used to maximize commercial and business revenue.*

5. In Clause-3.3 para-2 on page 078, the government recognizes that private participation in commercial projects requires the projects to be commercially viable.

26.125 **Authority's examination of BIAL's submission:** According to the said Annexure-3, the Project Information Memorandum, as referred to by BIAL appears to have issued to shortlisted parties in September, 1999. The Authority understands that pre-RFP meeting was held on 10<sup>th</sup> September, 1999 and the concerns and apprehension of the 7 pre-qualified bidders were also discussed. After considerable deliberations, as have been indicated in the brief history Section (Para-1) of the Consultation Paper, finally, the Concession Agreement was signed on 5<sup>th</sup> July, 2004.

26.126 Thereafter, the State Support Agreement with Govt. of Karnataka as well as Land Lease Agreement with KSIIDC were signed on 20<sup>th</sup> January, 2005. Hence once agreements are signed, the reference point would be the covenants contained therein. All the parties that are signatories to the agreement are normally expected to incorporate the appropriate covenants reflecting their mutual agreements. The Authority, therefore, would take into account the covenants of the Concession Agreement.

26.127 In Annexure-3, apart from reference to PIM, BIAL has also referred to clauses in the Concession Agreement as well as State Support Agreement and Project financials. BIAL has also referred to lenders to BIAL having committed their investments to the project at the financial closure, and that the fundamental bidding assumptions should not be changed in any way lest it enhances the risk perception resulting in an increased cost of capital. The Authority notes that BIAL had proposed a cost of capital at 24.4% that the Authority has not found to be reasonable and the Authority has now proposed to keep the same at 16%. The apprehension of BIAL regarding increase in the cost of capital, therefore, appears to be unfounded.

26.128 Furthermore, the Authority notes that in one of its submissions on position under AERA Act, BIAL has stated that "*Authority's reliance on the Standing Committee Report is misplaced in law, and that it should rely on the very words employed in Section 13(1)(a)(v), to cull out the true import of this Section.*" However, at the same time BIAL urges the Authority to rely on a Project Information Memorandum that pre-dates the signing of the Concession Agreement by at least 4 years. This, in the view of the Authority, is a mutually inconsistent submission. As far as the issue of the observations of the standing committee on "Non-Aeronautical Services" is concerned, the Authority has given its detailed analysis in Para 26.54 above.

#### **Affidavit of Dr. David Gillen**

**26.129** BIAL's letter states that:

*AERA in its airport order quotes Dr. David Gillen (para 5.27 of the Order) in support of its view that ICAO propagates Single Till. According to Dr. David Gillen himself, reference to*

*such quote was out of context and not applicable. The detailed affidavit submitted by Dr. David Gillen is enclosed as **Annexure-II**.*

**26.130 Authority's examination of BIAL's submission on affidavit of Dr. David Gillen:** The Authority has carefully given its consideration to this argument. As has been elaborated in Para 5.27 of the Airport Order, the Authority had quoted Dr. David Gillen as per his interpretation appearing in his paper. The Authority has also fairly mentioned that Dr. David Gillen, according to its readings of ICAO generally, is supportive of Dual Till.

**26.131** On perusal of Dr. David Gillen's affidavit, the Authority has not found the reference where he has stated or felt that the Authority has quoted him out of context. In Para 64 of his affidavit, Dr. David Gillen has clarified thus: *"It is, therefore, my opinion that the conclusion reached by AERA in Order 13 at para 5.32 is incorrect. It quotes me from two papers at paragraph 5.27 and 5.28. The quote as argued above, was based on the then existing statement in ICAO Doc 9802 (probably Dr. David Gillen is referring to ICAO doc 9082) regarding the inclusion of all revenues. I was under a mistaken assumption and have since read carefully the texts of the relevant documents and researched the ICAO position further."*

26.132 BIAL in its letter dated 15<sup>th</sup> April 2013 submitted to the Hon'ble MoCA, has, inter alia, also indicated that ICAO *"does not propagate that airports have to adopt Single Till though it suggests contributions from non-aeronautical revenues occurring from the tariffs of the airport to it should be considered"*. BIAL has also stated in this letter that "ICAO has no firm policy on the till to be adopted and it has in its recent policy document (Doc. 9082/9<sup>th</sup> Edi.) has mentioned inter alia, "consistent with the form of Economic oversight adopted, these costs may be offset by Non Aeronautical Revenues". The Authority has emphasised that legislative guidance on the economic oversight in contained in AERA Act, and particularly Section 13(1)(a) thereof. The Authority has also given in detail the legislative history (including the response of the government to the recommendation of the Standing Committee regarding the regulation of Non Aeronautical services) of incorporating in the Act the requirement that "revenues from services other than aeronautical" is one of the factors to be taken into account while determining charges of aeronautical services. The Authority is aware of the ICAO's position in this regard. Further analysis of BIAL's submissions regarding ICAO's policies is given in Para 26.134 below.

#### **ICAO Policies**

26.133 BIAL, in its letter dated 15<sup>th</sup> April 2013 to Hon'ble MoCA has referred to two documents of ICAO (a) Doc 9562 and (b) Doc 9082 as given below:

*Interpretation of Sub-Paragraphs 22(i) and 22 (vii) in the ICAD's Policies for Charges and Air Navigation Services (Chapter 4 Pages 13 of Doc 9562) The following guidance may be used when applying the above principles*

- 1. The existence of air traffic activity is a necessary precondition for the generation of airport non-aeronautical revenues. Such revenues are then generated through management initiatives in offering suitable products and prices. All aeronautical and non-aeronautical revenues to defray the cost base for charges is an acknowledgement of the partnership between airports and users.*
- 2. The non-aeronautical revenues in question do not normally include revenues earned by the airport from activities undertaken off -airport of those undertaken by the airport in full competition with other suppliers.*
- 3. Given the different local circumstances and fast changing conditions, with respect to airport ownership and management, as well as regulatory regimes, there are likely to be a range of different appropriate treatments of non-aeronautical income by airports.*
- 4. When determining the contributions from non-aeronautical revenues, high priority should be given to the investment needs of airports, taking into account paragraph 24 of Doc 9028/6, which addresses pre-funding of projects, while recognizing that there may be many alternatives to finance infrastructure development.*
- 5. The appropriate return on aeronautical activities should reflect differences in the level of risk from non-aeronautical activities. Further, in order to provide incentives to the airport operator, high levels of service and efficiency in aeronautical activities may be rewarded with higher returns and vice versa.*
- 6. When defining the contribution from non-aeronautical revenues, an accounting system should be in place to identify the relationship between costs and revenues of non-aeronautical activities (Doc 9082/6, sub-paragraph 17 vi) refers).*
- 7. As stated in point 4 above, it may be appropriate for airports to retain non aeronautical revenues rather than use such revenues to defray charges. However, there is no requirement for airports to do so and, in appropriate circumstances; there may be solid grounds for charges to be lower, consistent with Doc 9082/6, sub paragraph 22 vii)*
- 8. None of the foregoing should be interpreted as encouragement to airports to exploit unreasonably their market position relative to users.*

**26.134 Authority's examination on BIAL's submission ICAO Policies:** ICAO document 9562 is the "Airport Economic Manual and 9082 is the ICAO's Policies for Charges and Air Navigation Services. The Authority has analysed the statement made by BIAL with respect to both these documents regarding Doc 9082/6, 6<sup>th</sup> Edi. of Doc 9082 which is published in 2001.

26.135 Page 4 of BIAL's letter indicate BIAL's interpretation of sub-para 22(i) and 22(vii) of document 9082/6. Upon going through these, the Authority notes item 4 (on page 5 of BIAL's letter) which read as under:

*"when determining the contributions from non-aeronautical revenues, high priority should be given to the investment needs of airports taking into account paragraph 24 of Doc 9028/6" (BIAL apparently seems to have been referring to 9082/6 which talks of pre-funding of projects while recognizing that there may be many alternatives to finance infrastructure development.)*

26.136 Subsequently, in point number 7, BIAL's letter states as under

*"as stated in point 4 above, it may be appropriate for airports to retain non-aeronautical revenues rather than use such revenues to defray charges. However, there is no requirement for airports to do so and in appropriate circumstances, there may be solid grounds for charges to be lower consistent with doc 9082/6 sub-para 22 (vii). (probably BIAL is referring to page 4-27 of Doc. 9562 namely the Airport Economic Manual)*

26.137 The Authority has gone into para 22(vii) of Doc 9082 referred to by BIAL. This para reads as under:

*"airports may produce sufficient revenues to exceed of direct and indirect operating costs (including general administration, etc) and to provide for a reasonable return on assets at a sufficient level to secure financing on favourable terms in capital markets for the purpose of investing in new or expanded airport infrastructure and where relevant, to remunerate adequately holders of airport equity."*

26.138 The Authority also maintains that while determining charges for aeronautical services, the Authority is required to take into account the capital expenditure incurred and timely investment in improvement of airport facilities (section 13(1)(a)(i)). The Authority, in Para 4.21 above, indicated the provision in the CA regarding UDF for various proposes including "expansion of the facilities at the Airport". It has also proposed to give a reasonable return on assets. Hence, as far as remunerating adequately, the holders of airport equity is concerned, a reasonable return on assets is sufficient for mitigating and incentivizing their equity investments.

26.139 Authority has noted para 2(i) of Doc 9082 (9<sup>th</sup> Edi (2012) relevant portion of which reads as, "consistent with the form of economic oversight adopted, these costs may be offset by the non-aeronautical revenues". It would, therefore appear to the Authority that ICAO is leaving the form of the economic oversight to the charging Authority and further explicitly stating that "costs may be offset by the non-aeronautical revenues". As is seen from Para 26.132 above, BIAL has itself stated that "ICAO has no firm policy on the till to be adopted ...". The Authority has in its calculation of

Aeronautical tariffs and especially the UDF, found that passenger burden is least in Single Till. Focus on lowering passenger burden has also been stated by the GoI as its objectives. As required by the Order of AERAAT issued on 15<sup>th</sup> February 2013, the Authority has made calculations based on both Single and Dual Till and taking into account the totality of circumstances, would finally propose its regulatory approach for stakeholders consultation, noting however that as stated by BIAL, ICAO has no firm policy on the till and hence it cannot be said that it is against either Single Till or Dual Till. The final proposal of the Authority as would be submitted for Stakeholders consultation with regard to Till would thus be in consonance with ICAO Policies.

### **Concession Agreement and Dual Till**

26.140 The Authority notes that BIAL has submitted the Financial Model and the MYTP Submission both under Single Till and Dual Till. BIAL has stated in its submission that:

*“....., the operations and business of BIAL is governed by the terms and conditions of the Concession Agreement (C.A.) entered into between the Ministry of Civil Aviation (Government of India) and Bangalore International Airport Limited (BIAL) on 5th July 2004 and related project agreements. In accordance with the C.A., the regulated charges include landing charges, parking charges, housing charges, passenger service fee (PSF) and user development fee (UDF). The rest of the revenue items such as Aviation Concessions, retail, commercial are classified as non-regulated charges, among others. Further, C.A. does not provide for any cross-subsidization of non-regulated charges for determining the tariff of regulated charges. Therefore, the financial statements and assumptions are developed taking this approach and the details of the formats, as required under MYTP, are presented in this document.*

26.141 Also, the Authority notes that while the Concession Agreement, referred by BIAL lists the Regulated charges that can be collected, it also specifies that

*“From the date the IRA has the power to approve the Regulated Charges, BIAL shall be required to obtain approval thereof from the IRA. In this regard BIAL shall submit to the IRA, in accordance with any regulations framed by the IRA, details of the Regulated Charges proposed to be imposed for the next succeeding relevant period together with such information as the IRA may require for review“*

26.142 BIAL has stated that the Concession Agreement signed between BIAL and the Central Govt. “implies” Dual Till framework for determining the aeronautical charges at BIAL. The Authority has gone into the Concession Agreement dated 5<sup>th</sup> July, 2004 between BIAL and Ministry of Civil Aviation, Govt. of India. Its observations are as follows:

26.143 At the outset, it is well settled that an agreement needs to be explicit and unless clearly

stated, one may not be able to impute certain meaning as 'implied' into it. As far as the issue of Dual Till being implied in the agreement is concerned, the Authority notes that the Concession Agreement defines "Independent Regulatory Authority" or IRA to mean the "*Airports Economic Regulatory Authority set up to regulate any aspect of airport activities set up (i) by way of an executive order provided the functioning of the IRA is not within the control of Gol or (ii) by an Act of Parliament or an ordinance or any rules made thereunder*". The Act defines 'airport activities' to mean provision at or in relation to the airport, of the activities set out at Schedule-3 Part-1, as amended from time to time, pursuant to ICAO guidelines. Provisions of Ground Handling, Cargo Handling and Aircraft Fuelling Services are included in the list of 'Airport Activities' and not included in Part 2 of Schedule 3 that lists "Non Airport Activities". Hence, even going purely by the Concession Agreement, the Authority is to "regulate **any** aspect not only of these services but other items included in "Airport activities" if the Gol were to expand of the scope of the remit of the Authority under Section 2(a)(vii). At any rate, after the promulgation of AERA Act, there can be no doubt that it needs to determine tariff for these three services.

26.144 With respect to the charges that the parties have right to impose, the substantive provision is embodied in Clause-10 of that agreement. This Agreement states that

*"subject to applicable law, no person (other than BIAL, any service provider and the holder granted a relevant service provider right or the AAI) may impose any charge or fee (a) in respect of the provision at the airport or any facilities and/or services which are included within airport activities or (b) in respect of the movement of passengers, or vehicular traffic at the airport or site."*

26.144.1 It is noteworthy that the stated right of BIAL **et al** is specifically subject to applicable law. The applicable law is also defined in the Concession Agreement meaning as

*"laws provided over or effected by Govt. or the State Govt. including rules and regulations and notifications made thereunder and judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the substance of this agreement of this Agreement."*

26.145 The Airport Regulatory Authority Act is such an applicable law, and more so, is the specific mention of the 'IRA' which is expressly mentioned in the Concession Agreement itself as have been set up to regulate any aspect of airport activities.

26.146 The three services of Cargo Handling, Ground Handling and Fuel Supply find mention in the airport activities of the Schedule-3, Part-1 (i.e as "Airport Activities"). However, they do not find mention in Schedule-6, namely that of Regulated charges. As per Clause 10.3, read with Schedule 6, of the Concession Agreement, BIAL **et al** is free to determine charges other than the regulated



charges. Based on this permission to levy such other charges, BIAL appears to have inferred that the Concession Agreement implies Dual Till framework.

26.147 The Authority observes that such inference is unwarranted even within the interpretation of the Concession Agreement. Freedom to levy “other charges” is not to say that the revenues therefrom should not be reckoned towards determination of aeronautical tariffs. Furthermore, after passing of the AERA Act, according to AERA Act, services like Cargo, Ground Handling and Fuel Supply are defined as Aeronautical Services for which charges are required to be determined by the Authority. The Concession Agreement also stipulates that IRA can be set up to regulate any aspect of Airport Activities. Since Act takes primacy over the agreements, etc., charges in respect of Cargo, Ground Handling and Fuel Supply cannot be determined at will by BAIL et al but need to be determined by the Authority. It has already done so with respect to Air India SATS, Globe Ground India, Indian Oil Sky tanking, Bharat Stars Services Private Limited and Menzies Aviation Bobba Bangalore - the independent service providers that are providing these services at Bengaluru International Airport.

26.148 Apart from classifying the charges into regulated charges and other charges, Consultation Agreement does not have any covenants with regard to the methodology for the determination of the regulated charges. On the other hand, the definition of Independent Regulatory Authority (AERA) states that such an Authority is to be set up to regulate ‘any’ aspect of the airport activities. Airport Activities as defined in Schedule 3 Part I of the Concession Agreement not only include the above three services, it also includes other activities like the duty free sales, restaurants, bars, Vehicle Parking, Conference centre, flight catering services, general retail shops etc. that are generally known as part of ‘Non-aeronautical services’. Concession Agreement nowhere mentions that the revenues from the ‘other charges’ should not be reckoned during the determination of aeronautical tariff. The Authority also notes that the Non-aeronautical services have been concessioned out to third parties. The charges or tariffs of such third parties providing “Non Aeronautical services” are not regulated (except CGF service providers, as these three services are included in the Concession Agreement as part of “Airport Activities” and further defined as “Aeronautical Services” as per AERA Act). The determination of tariff for CGF by the Authority is therefore fully in accordance with the AERA Act as well as after considering the Concession Agreement. Furthermore, should it finally propose to adopt Single Till based on its assessment of the circumstances in the Indian context, this too would be in accordance with the provisions of AERA Act after having taken into consideration the Concession Agreement.

26.149 Section 13(1)(a) of the AERA Act contains legislative guidance as to the factors that the Authority need to take into consideration while determining the tariffs for aeronautical services. The concession offered by the Central Govt. is one such factor. The Authority has thus taken into

consideration the Concession Agreement dated 5<sup>th</sup> July, 2004 signed between the Central Govt. and BIAL. After analysing the covenants of the Agreement, the provisions of the AERA Act, its own framework developed after extensive stakeholders' consultation, the Authority has come to the conclusion that the Dual Till is nowhere implied in the Concession Agreement and the inference of BIAL that the Concession Agreement implies Dual Till is thus unfounded.

**Unwavering focus of the Government to minimise passenger burden:**

26.150 **Pronouncements by GoI (MoCA) and some State Governments:** The Authority has observed that the Government, through its various pronouncements has put passengers and cargo users as its main focus for economic regulation of airports through its stated objective of minimising passenger charges. Other pronouncements of Governments highlighting the unwavering focus of the government to minimise passenger burden, is given below.

26.151 Comments of the MoCA to the White paper: At the commencement of its work, the Authority had issued a White Paper indicating its general approach to such determination. MoCA had given its comments at the stage of White Paper vide its letter No.AV.2011/003/2009-AD dated 9th March 2010, wherein it stated inter alia that “...*The ultimate objective should be to reduce the burden on the end users (passengers).*” Taking note of the comments of MoCA as well as those of the Stakeholders the Authority adopted an approach of balancing the reasonable interest of the Airport users (defined as Passengers and cargo facility users) with those of the Airport Operator, keeping in view the legislative policy guidance given to it under Section 13(1)(a) of the AERA Act.

26.152 In response to a Consultation Paper on the Multi Year Tariff Proposal and Annual Tariff Proposal submitted by M/s Bhadra International India Ltd, for Ground Handling Services at NSCBI Airport, Kolkata, the Transport Department, Govt. of West Bengal has vide its letter No. 3993-STD/2012 dated 25<sup>th</sup> July, 2012, inter alia, stated “*However, it may be mentioned here that the decision may be taken strictly as per norms and rules with minimum inconvenience/burden to the passengers.*”

26.153 The Government of Maharashtra vide letter No. D. O. No. AAI- 2012/C. R. 522/28-A dated 6<sup>th</sup> December 2012, in response to the Consultation Paper No. 22/2012-13 dated 11<sup>th</sup> October 2012, issued by this Authority in the matter of determination of Aeronautical tariffs at CSI Airport, Mumbai had stated that “*since AERA is a statutory body set up an act of Parliament i.e. Airports Economic Regulatory Authority of India Act, 2008, (the AERA Act) and carrying out its function of tariff determination, AERA should take the best decision keeping in mind the interest of Mumbai airport passengers and developers*”

26.154 MoCA's Press Release of 12<sup>th</sup> October, 2012 asked AAI not to ask for DF in the matter of tariff determination in respect of Kolkata and Chennai airports as under:

*“Taking a strong view on the proposals of Airports Authority of India (AAI) to levy Airport Development Fee (ADF) on the passengers at the Chennai and Kolkata airports, Minister of Civil Aviation Shri Ajit Singh has directed AAI not to propose any such fee on the passengers. Accordingly the AAI has now submitted proposals to Airports Economic Regulatory Authority (AERA) without incorporating ADF. **The Minister’s directive on ADF is in line with the stated objective of the Government to make the air travel affordable and to ensure that the passengers are not subjected to any extra burden.**” (emphasis added).*

26.155 To minimize the burden on the passengers was also the publicly stated objective in the MoCA’s Press Release of 16<sup>th</sup> October, 2012 when it asked AAI to contribute equity capital in DIAL as well as MIAL so as to do away with development fee with effect from 01-01-2013. MoCA had stated that:

*“**Emphasizing on the objective of the Government to make the air travel affordable and to ensure that the passengers are not subjected to any extra burden,** (emphasis added) Shri Singh has asked the AAI to take on priority the equity infusion with the purpose of abolition of ADF. If the present funding gaps in case of MIAL and DIAL are met in terms of equity infusion and proportionate raising of loans by the airport promoter including AAI, the ADF will stand abolished. As per the directions of Shri Ajit Singh the proposal regarding equity infusion by AAI will be soon submitted to AERA”*

26.156 According to the latest pronouncements of the Hon’ble Minister for Civil Aviation, the move to allow UAE city-state Abu Dhabi’s airlines increased access to the Indian market, was made keeping “passenger convenience” in mind as more foreign carriers would increase options for fliers and **bring down airfares on overseas routes** (Emphasis added) (Anindya Upadhyay, ET Bureau May 1, 2013, 06.38AM IST), wherein the Government has emphasized the ultimate objective to be to reduce the burden on the end user (passengers). This unwavering focus of the Govt. on minimizing passenger charges has important implication in the regulatory till.

26.157 The Authority, therefore believes that its approach of balancing the interest of airport users (defined as passengers and Cargo users) and that of the Airport Operator and minimising the burden on the passengers, while determining aeronautical tariffs of the major airports, has MoCA’s broad acceptance and is consistent with various government pronouncements made at various points in time.

26.158 **Approach of the Planning Commission: Burden on Passengers, ADF and UDF, lowering of costs:** Apart from the various pronouncements of the MoCA, the Authority has noted that other policy level organisations of the GoI have also stated that lowering of costs is an important

consideration. For example, it is observed that the Planning Commission has stated “lowering of costs” as one of the objectives of private sector’s participation in the infrastructure sector. Task Force constituted by the Planning commission on “Financing plan for Airports” issued its report in July 2006<sup>17</sup>. The Task Force had observed as under”

*“It was suggested by AAI that most of the projects being contemplated under the non-Metro airports development initiative pertain to Airside and Terminal Buildings and the projects are likely to yield either negative IRR or an IRR below the PIB norm of 12%. As such, levy of ADF/ UDF on passengers at these airports was proposed. The Task Force felt that users should not be burdened with ADF/ UDF for financing un-viable projects. This is particularly important in the context of the policy objective to make civil aviation a mass rather than an elitist mode of travel and to make air travel more affordable. Accordingly, the financing plan does not include revenue from ADF/ UDF charges. Recourse to ADF/ UDF should be the last resort in individual cases after all efforts at implementation through PPP have not succeeded (Source: Report of the Task Force - Financing Plan for Airports issued in July 2006)”*

26.159 The Authority notes that according to the Task Force, even unviable projects should not be burdened with ADF/ UDF. According to the Task Force Report of July 2006, the “*policy objective to make civil aviation a mass rather than an elitist mode of travel and to make air travel more affordable*” would not be achieved if the passengers were to be burdened by ADF/ UDF.

26.160 If an airport operator has “revenue from services other than aeronautical”, to ignore those (as will be the case in Dual Till) and then calculate UDF to make the airport viable, in Authority’s view, cannot be termed as “last resort” more so when the legislature has clearly and unambiguously stated that the Authority should take into account such revenues for the purpose of determining the aeronautical tariffs. It has been emphasized by the Task Force that ADF/UDF add to the travel costs unnecessarily and the Task Force did not, therefore, recommend any new charges and that recourse to ADF/ UDF should be the last resort in individual cases after all efforts at implementation through PPP have not succeeded. It would thus appear that Planning Commission felt that ADF/ UDF would not be required under the PPP route. The Authority has noted that the date of this report namely July 2006 is much later than 1<sup>st</sup> July 2004 when the AAI Act was amended to incorporate Section 22A that expressly provided for levy of ADF. The provision for UDF in Rule 89 of Aircraft rules 1937 has been in existence much earlier than the report of the Task Force in 2006, and in fact even before 5<sup>th</sup>

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<sup>17</sup> The Task force was headed by Shri Anwar ul Hoda, Member, Planning Commission, and had Shri Adarsh Kishore, Finance Secretary, Shri Ashok Jha, Secretary, Department of Economic Affairs, Shri Ajay Prasad, Secretary, Ministry of Civil Aviation, Shri Gajendra Haldea, Adviser to Deputy Chairman, Planning Commission, Shri B. N. Puri, Adviser (Transport), Planning Commission and Shri K. Ramalingam, Chairman, AAI as its members

July 2004 when the Concession Agreement between BIAL and Gol was signed and which specifically refers to UDF. This time sequence gives, in the opinion of the Authority, broad approach regarding the circumstances under which ADF and UDF can be imposed even after their incorporation in the relevant statute and regulation. The Task Force clearly stated that *“...users should not be burdened with ADF/ UDF...”* Hence, in a PPP mode, the Authority infers that the ADF/ UDF should not be required to be resorted to, let alone it being the intention that higher UDF be granted that would give to the Private Airport Operator more than fair rate of return (as would happen in Dual Till approach). Higher UDF (under Dual Till) would make Air Travel less affordable and consequently militate against the stated Policy objective mentioned in the Task Force Report (2006) namely to *“make civil aviation a mass rather than an elitist mode of travel and to make air travel more affordable”*.

26.161 In another report “Private Participation in Infrastructure, Published by Secretariat for Infrastructure, Planning Commission, Government of India” dated Jan 2010, Deputy Chairman, Planning Commission has observed that “Private participation would not only provide the much needed capital, it would also help to lower costs and improve efficiencies in a competitive environment”. The expectation from the PPP mode was thus to lower costs. These should then translate into making air travel more affordable through lowering of charges and *“make civil aviation a mass rather than an elitist mode of travel”* (Task force Report of July 2006). If an adopted regulatory approach increases the costs to the passengers (Dual Till), this would not be in consonance with the expectations of the planning Commission from PPP route in infrastructure development.

26.162 The Authority thus infers that the broad approach of the policy at the highest level, (with representation of senior most functionaries of the government) towards ADF and UDF is to use these measures as a last resort even for airports in the public sector.

26.163 In another report of the Task force of Planning Commission dated July 2012 on “Financing Plan for Airports”<sup>18</sup> the Planning Commission has made important observations regarding what according to it appeared to be a high level of UDF charge. In Chapter 5.1 of this report, it examined the case of Metro Airports at Chennai and Kolkata. Taking the example of Chennai, the Task Force examined the tariff filing of AAI before the Authority. It noticed that AAI had proposed *“to increase its present passenger fee from Rs. 77 to Rs. 237 (over three-fold increase) in case of domestic passengers and from Rs. 77 to Rs. 577 (over seven-fold increase) in case of international passengers”*. According to the Planning Commission, *“this would be very burdensome for the passengers and may*

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<sup>18</sup> Under the Chairmanship of Shri B.K. Chaturvedi, Member, Planning Commission with Secretary, MoCA, Secretary, Department of Economic Affairs, Advisor to Deputy Chairman - Planning Commission and Chairman, Airports Authority of India

also affect the growth in traffic. In case such an increase is not allowed, AAI is likely to make loss which will affect its operations elsewhere.”

26.164 Making the case for following PPP Model in respect of Chennai and Kolkata airports, the Planning Commission felt that “if a PPP concessionaire was engaged, it could raise significant non-aeronautical revenue, which in would turn reduce the passenger fee significantly”. The Authority, thus, notes that the Planning Commission had felt the level of UDF charges at Chennai for both domestic and international passengers as proposed by AAI very burdensome for passengers. The Planning Commission also felt that the increase in non-aeronautical revenues should enable the passenger fees to be reduced significantly. The Authority, since then, has finalised, under Single Till the UDF for the domestic as well as the International passengers, both for Chennai and Kolkata. The domestic UDF in Chennai was determined at Rs. 167 per departing domestic passenger and Rs. 600 per departing International Passenger. Figures of UDF for Kolkata are Rs. 400 per departing domestic passenger and Rs. 1000 per departing International Passenger<sup>19</sup>. According to the recommendations of the Planning Commission in its report of July 2012 mentioned above, the Planning Commission has recommended the PPP model for Chennai and Kolkata Airports on the expectation that the private sector partner would raise significant Non-Aeronautical revenues and thereby be able to reduce the passenger fee significantly. As far as the Private Sector Airport of Hyderabad is concerned, the Authority’s calculations show that (CP No. 9/2013-14 dated 21<sup>st</sup> May 2013) under Single and Dual Till the UDF for departing domestic passengers is as below.

**Table 132: UDF (in Rs.) in single and Dual Till for departing domestic and international pax as per Authority (with enhanced LPH and other charges) for HIAL**

Passengers	UDF under Single Till	UDF under Dual Till
Domestic Departing	330.49	845.77
International Departing	1306.60	3343.73

26.165 It would thus be seen that even under Single Till the UDF levels are much higher than what the Planning Commission had considered to be burdensome. The Authority observes that these observations of the Planning Commission are consistent with the broad approach of minimizing burden on the passengers.

26.166 To minimize the burden of airport charges on the passengers have, therefore, been the focus of the economic regulation of major airports (albeit consistent with giving a fair rate of return to the airport operator).

<sup>19</sup> In fact, on the basis of building block approach of determination of Aeronautical tariffs, the UDF for Kolkata for International departing passengers was calculated at Rs. 1998 per passenger. However, AAI, in public interest, suggested that for the current Control period, this figure be capped at Rs. 1000, leaving a shortfall in the targeted ARR of around Rs. 800 crores which could be appropriately considered, after Stakeholders’ Consultation, during the next control period commencing 1<sup>st</sup> April 2016

26.167 The government through its various pronouncements have put passengers and cargo users as its main focus for economic regulation of airports and minimising passenger charges as its objective. The Planning Commission also stated “lowering of costs” as one of the objectives of private sector’s participation in the infrastructure sector. MoCA had given its comments at the stage of White Paper vide its letter No.AV.2011/003/2009-AD dated 9th March 2010, wherein it stated inter alia that “...The ultimate objective should be to reduce the burden on the end users (passengers).” **The Authority, therefore believes that its approach of lowering burden on the passengers while determining aeronautical tariffs of the major airports is fully in consonance with Government’s approach of minimising the burden on the passengers as reflected in its various documents and pronouncements.**

26.168 **Transfer of Resources from the Passengers to the Airport Operator under Dual Till:** The Authority has calculated the requirement of UDF amount under both Single and Dual Till (on the assumption that the LPH is kept at the level proposed by BIAL and the Service Providers of CGF are not considered as it’s agents but as third party concessionaires and Independent Service Providers) for BIAL as per Table 128 which is reproduced below for easy reference.

Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single & Dual Till as per Authority*					
		2013-14		2014-15		2015-16	
		Single	Dual	Single	Dual	Single	Dual
Domestic (Rs.)	231.4	262.32	399.28	281.37	412.68	294.17	429.74
International (Rs.)	952.3	1049.27	1597.14	1125.48	1650.73	1176.69	1718.95

\* Proposed UDF levy is w.e.f. 01st October, 2013. The Authority would round off the above numbers to the nearest rupee.

26.169 The Authority has also calculated the UDF (averaged over domestic and international passengers over the balance period of the current control period) under Single and Dual Till. In Single Till the average UDF for the period is Rs. 467.62 per departing passenger and in Dual Till Rs. 688.78 per departing passenger. Taking the total number of departing passengers over the balance period of the current control period from October 2013 at 18.55 Million, under Dual Till, the transfer of resources from the passengers to the Airport Operator can be calculated to be of the order of Rs 410 Crores over the control period. This increases to Rs. 970.99 Crores on recomputation taking Pre-control shortfall at Rs. 371 crores, under Dual Till (Refer Para 22.2 above). The Authority notes that it has addressed the issue of the “economic and viable operation” of BIAL in its computation under Single Till. Hence, the above amount of Rs. 410 Crores is over and above the requirement for economic and viable operation of BIAL and thus could be construed as unjust enrichment of the Airport Operator at the cost of passengers by extracting from them higher UDF through the operation of Regulatory framework of Dual Till based on Legal provision of UDF under Section

13(1)(b) of the AERA Act, 2008 read with Rule 89 of the Aircraft Rules, 1937. Successive Government pronouncements on protecting the interest of passengers and reducing the burden on them are also not in conformity with this.

26.170 **Single Till – vs – Dual Till - CAA analysis:** The Authority is also cognizant of the analysis of the two regulatory approaches viz. Single Till and Dual Till during the various Quinquennial Price Cap tariff determinations of the Civil Aviation Authority (CAA) / Competition Commission (CC) of UK. In 2002, the CAA had proposed a move from Single to Dual Till. The CC to whom this matter was referred, did not accept this proposal of CAA and instead recommended continuance of Single Till, giving its reasoning as under:

*“Conclusions on single/Dual Till*

2.221. *Because the issue of single or Dual Till understandably preoccupied us and many of the parties to the inquiry in its internal stages, on 11 July 2002 we issued a statement of our, then, thinking on the issue (see Appendix 2.3). We said we had found the arguments and current evidence for moving to a Dual Till at any of the three BAA London airports not persuasive. None of the evidence we subsequently received led us to change that view: we therefore believe it appropriate to retain the single-till approach in setting airport charges for Q4.*

2.222. *Our main reasons are as follows:*

*(a) There is no evidence that the Single Till has led to any general under-investment in aeronautical assets at the three BAA London airports in the past, nor any expectation that it will do so over the next five years (see paragraph 2.122).*

*(b) It is not clear that the Dual Till, as opposed to the Single Till, would be likely to lead to significantly better aeronautical investment in the future and in some respects is likely to be worse (see paragraph 2.122).*

*(c) The Dual Till could improve the efficient utilization of capacity, but the benefits are unlikely to be more than marginal even at Heathrow, where they would not occur until Q5 (see paragraph 2.141).*

*(d) Nor do we see significant benefits from any deregulation of commercial activities. We are not persuaded that the distinction between locational and monopoly rents is useful in this context. In so far as airport charges affect fares, the current relatively high profits from commercial activities are applied to the benefit of passengers; the dual-till approach is likely to require increased regulation of such activities (see paragraph 2.148).*

*(e) The Dual Till could also risk unduly benefiting commercial activities, at the expense of non-capacity-enhancing aeronautical activities, which may not attract sufficient space, funds or attention (see paragraph 2.161).*



*(f) It is difficult sensibly to separate commercial and aeronautical facilities. Commercial revenues at the three BAA London airports cannot be generated without aeronautical facilities: they should therefore be regarded as one business (see paragraph 2.170).*

*(g) Since the successful development of commercial revenues requires airlines to deliver passengers to or from the airport, the benefits of commercial activities should be shared with airlines and airline users (see paragraph 2.171).*

*(h) We believe that average fares would be affected at both congested and uncongested airports if airport charges were to be higher at the three BAA London airports as a result of a switch to a dual-till regime, and we do not think that effect can be justified where it arises from application of dual-till regulation with little or no offsetting benefits (see paragraph 2.197).*

*(i) A move from the Single Till to the Dual Till would in the longer term mean a substantial transfer of income to airports from airlines and/or their passengers and be to their detriment, potentially undermining regulatory credibility and creating regulatory uncertainty (see paragraph 2.200).*

2.223. We also note:

*(a) No useful inferences can be drawn at this time from overseas airports which use the Dual Till in whole or in part, as their circumstances are different from those of the three BAA London airports (see paragraph 2.74).*

*(b) Nor are we persuaded that the dual-till approach would act as an effective incentive on BAA to maintain or improve performance by providing ‘something to lose’ (through reversion to a single-till approach) at future regulatory reviews should it fail to do so (see paragraph 2.121).*

*(c) The CAA proposal of raising the price cap above single-till levels at Gatwick and Stansted in Q4 but not at Heathrow would be contrary to efficient resource allocation in Q4 (see paragraph 2.141).*

*(d) It is difficult, in practice, to allocate both investments and operating costs between aeronautical and commercial activities. To the extent that some of the judgements that have to be made are arbitrary, future disputes about cost allocation could harm relations between the airport and its users (see paragraph 2.216).”*

26.171 The CAA accepted this recommendation and proceeded to determine the relevant price cap under Single Till. Thereafter in the subsequent control period Q5, CAA did not reopen this issue and continued with Single Till and, as per CAA’s statements in its Economic Regulation of Heathrow and Gatwick Airports, 2008-20, (11<sup>th</sup> March 2008), Appendix E: Regulatory Policy Statement:

*“in its December 2005 policy consultation, the CAA consulted on the view that its evolutionary approach to this review, the extensive discussion and analysis of the issue at the last (Q4) review and the resulting conclusions, mitigated against re-opening the debate over the introduction of a Dual Till. Instead, it proposed that price caps for airport charges in Q5 be set on the basis of a Single Till. In its May 2006 publication, the CAA confirmed its intention to continue to develop policies and price cap proposals consistent with its statutory duties within a Single Till framework (Para E 30)... In its October 2007 advice to the CAA, the Competition Commission restated its main reasons for retaining the Single Till approach in the last (Q4) review, and stated that **it had seen nothing to change its previous assessment of the issue.** (Emphasis added) The Competition Commission therefore recommended that airport charges should continue to be set on a Single Till basis. (Para E 31)”*

26.172 The Authority further notes that CAA UK in its most recent (30.04.2013) price cap proposals in respect of Heathrow, Gatwick and Stansted for the sixth quinquennium (Q6) has decided to continue with Single Till.

26.173 It would thus be clear that the Competition Commission, UK as well as the CAA UK have found Single Till approach as consistent with its regulatory objectives. The reasons advanced by the Competition Commission UK are, in the opinion of the Authority, relevant in the Indian context. The Competition Commission UK had stated that shift to Dual Till, inter alia, would result in large swing of revenues from airlines to airports. In the Indian context, the swing would be directly from the passengers to the private Airport Operators through the operation of higher passenger charge (User Development Fee). The quantum of such a swing from passengers to private Airport Operator over a five year period for BIAL is estimated at approximately Rs. 410 crores (calculated as the sum of differential revenue to be recovered from UDF for the balance years in the current control period)

#### **Authority’s view on Till to be adopted**

26.174 .Having regard to the focus on the interest of the passengers and cargo facility users, the Authority considers it appropriate to balance the interests of the Airport Operator with passengers in such a manner that once the airport operator is assured a fair rate of return (on equity) consistent with the risk profile (with various risk mitigating measures incorporated), the charges on the passengers would need to be minimized.

26.175 The Authority’s approach to economic regulation of airport is that a comprehensive view of economic needs of the airport is to be taken into account. The Authority also stresses on the Government’s objective of minimizing the charges on passengers (which in the airport tariff determination are the User Development Fee). The Authority has given its consideration to the

Means of Finance required for Capacity expansion in Proposal No 21 below.

26.176 Since, UDF is imposed through operation of the Aircraft Rules, 1937 as well as the AERA Act, this can be considered as compulsory extraction of money from the travelling passengers to be put in the hands of the airport operator without any express purpose attached to it, save to allow the airport operator to obtain returns substantially more than the fair rate of return. This can be viewed as unjust enrichment of the airport operators at the expense of the travelling passengers through operation of statutory provisions.

26.177 The Authority has given its detailed analysis on the various submissions made by BIAL both with respect to the individual building blocks with reference to single and Dual Till. It has also given the financial implications of both these approaches (single and Dual Till) on the passenger charges. Based on the above analysis, the Authority has come to the tentative conclusion that Single Till does not cause any injury to the airport operator except not allowing him to obtain more than fair rate of return on the investment as he would reap under Dual Till. The Authority does not feel that the inability to reap such more than fair rate of return can be termed as injury. In fact, it can be termed as injury to passengers who would be required to pay more UDF only to enable the airport operator to get higher than fair rate of return under Dual Till.

26.178 The Authority is summarising its analysis regards both single and Dual Till as under:

26.178.1 The Authority's Single Till approach takes into account income from the non-aeronautical services within the terminal building (and car parking). This income from non-aeronautical services within the terminal building is generated by passengers whose contribution through direct charges in the form of UDF to give the airport operator fair rate of return is substantial (over 50% in BIAL even in Single Till).

26.178.2 The Authority generally does not take into account real estate income in regulatory ambit of Single Till. Its treatment of real estate income to BIAL is a consequence of the Land Lease Agreement that states that the land is given to the airport operator to improve the viability of the project (airport). As indicated in Para 26.123 above, Authority has not proposed to subtract from RAB, any amount towards land monetisation (as commercial exploitation of part of land in excess of airport requirements and land that is situated outside the terminal building) as BIAL has stated that the Business Plan for Real estate has not been finalised.

26.178.3 The Authority's analysis about UDF in Single Till and Dual Till shows that for a given LPH, Single Till results in lowest passenger charge. This is much higher in Dual Till.

26.178.4 As long as fair rate of return is given to the airport operator, he should be indifferent to the regulatory till. In Dual Till, the airport operator gets more than fair rate of return directly at the expense of the passengers. To put it differently, passengers are required to pay higher charges only to enable the airport operator get more than fair rate of return.

26.178.5 The Government's declared policy is to minimize passenger charges. The Authority has given detailed reasoning and various pronouncements in Para 26.150 above. Mention is also made (Para 4.4 above) wherein the Government has emphasized the ultimate objective to be to reduce the burden on the end user (passengers). Reference has also been made to the observations of the Planning Commission treating both ADF as well as UDF as measures of last resort on the ground that they impose additional burden on the passengers (Para 26.158 above). Airport Development Fee, at least, is a time-bound charge and depending on the quantum and the rate thereof, its burden on the passengers would expire after a certain period of time. User Development Charge which is higher in Dual Till is an on-going charge without any time limit. Single Till, therefore is fully in consonance with the Government's publicly declared policy of minimizing the passenger charges. On the other hand, Dual Till goes against the declared policy as above.

26.178.6 Single and Dual Till are both consistent with ICAO's position in that ICAO does not prescribe either, leaving it to the Regulatory oversight. Different countries in the world pursue different regulatory tills. Hence different countries have adopted policies of regulatory till suitable for the particular country. The private operators wishing to operate in that country have conformed to regulatory till policy of that country.

26.178.7 The AERA Act gives Legislative policy guidance as to what factors are to be taken into account while determining the aeronautical charges. One of such factor is "*the revenue received from services other than the aeronautical services*". The Legislative background including the Government's response in introducing this clause clearly shows that both the Govt. as well as the Legislature intended that all the revenues from the services other than aeronautical services should be taken into account while determining aeronautical tariffs. This is also consistent with the professed Govt. objective of minimizing the passenger charges.

26.178.8 **Balancing the interests of Airport Users and Airport Operator:** The Legislature has also given the policy guidance to the Authority, regarding determination of aeronautical charges. The Authority has given its interpretation of the words "revenue from services other than aeronautical" (vide discussion starting with Para 26.58 above).

26.179 The Authority notes that AERA Act defines "Airport User" meaning "any person availing of passenger or cargo facilities at the Airport". Single Till adequately balances the reasonable interests of the Airport Users and those of the Airport Operator. In view the above considerations, the Authority concludes that Single Till is preferable to Dual Till.

## **Proposal No 19. Regarding Regulatory Till**

### **19.a. Based on the material before it and its analysis, the Authority proposes**

- i. **To determine the Aeronautical Tariffs in respect of Bengaluru International Airport under Single Till.**

## 27 Annual Tariff Proposals as computed by the Authority for Stakeholders' Consultation (CGF as Concessionaires and Agents)

27.1 In Proposal No 19 above, the Authority has put forth for Stakeholders' consultation, adoption of Single Till for the purposes of determination of Aeronautical tariffs in respect of Bengaluru International Airport in the first control period. It has also calculated the Aeronautical Tariffs as well as UDF proposals in respect of the following alternative scenarios.

27.1.1 CGF service providers not as agents of BIAL but as ISPs - ATP and UDF under **Single Till** (Table 128)

27.1.2 CGF service providers as agents of BIAL and not as ISPs - ATP and UDF under **Single Till** (Table 130)

27.2 The Authority has already computed the UDF (w.e.f 1<sup>st</sup> October 2013) for Domestic and International departing passengers treating CGF Service providers as Third Party Concessionaires (and not as agents of BIAL) in Table 128 (both under Single Till and under Dual Till). It has also calculated UDF (w.e.f 1<sup>st</sup> October 2013) if CGF Service providers are to be treated as agents of BIAL (in line with BIAL's submissions in Appeal No. 12/2011 before AERAAT) in Table 130 (both under Single Till and Dual Till). Thereafter, after analysing both the regulatory approaches viz. Single Till and Dual Till, the Authority proposed for Stakeholders Consultation adoption of Single till vide Proposal No 19 above. Accordingly, for sake of easy reference the Authority is presenting hereunder consolidated tabulation of the results of the tables referred to in Para 27.1 above.

**Table 133: Consolidated Tariffs under Single Till - Considering CGF Service Providers (a) as Concessionaires and (b) as agents (w.e.f 1<sup>st</sup> October 2013)**

<b>(A) Tariffs under Single Till - considering CGF Service Providers as <u>Concessionaires</u></b>				
<b>UDF</b>				
Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single Till as per Authority*		
		2013-14	2014-15	2015-16
Domestic (Rs.)	231.4	262.32	281.37	294.17
International (Rs.)	952.3	1049.27	1125.48	1176.69
* Proposed UDF levy is w.e.f. 01 <sup>st</sup> October, 2013. The Authority would round off the above numbers to the nearest rupee.				
<b>Landing, Parking, Housing Charges – As per revised rates proposed by BIAL</b>				
<b>(B) Tariffs under Single Till - considering CGF Service Providers as <u>Agents of BIAL</u></b>				
<b>UDF</b>				
Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single Till as per Authority*		
		2013-14	2014-15	2015-16

Domestic (Rs.)	231.4	0.0	40.56	106.56
International (Rs.)	952.3	0.0	162.23	426.26
* Proposed UDF levy is w.e.f. 01st October, 2013. The Authority would round off the UDF determination to the nearest rupee.				
Landing, Parking Rates are as per the existing rates				
*In the year 2013-14 UDF will be Zero and the LPH Charges will be reduced by			14.59%	

27.3 The Authority's analysis shows that if the CGF Service Providers are considered as agents of BIAL (as has been averred by BIAL before AERAAT in Appeal 12/2011), the Aeronautical Tariffs and UDF are lower than that computed considering the CGF Service providers as ISPs. With LPH and CIC kept as per BIAL's proposal, Fuel Through put charge (FTC) is retained at the current level of Rs. 1067 per kilo litre the recomputed UDF per departing passenger is lower as compared to the UDF per departing passenger, if CGF Service Providers were considered as ISPs as can be seen from Table 133 in Para 27.2 above, where there is also a need to increase the LPH as per the revised rates proposed by BIAL.

27.4 The Authority has in Proposal No 19 above has proposed to determine the Aeronautical Tariffs in respect of Bengaluru International Airport under Single Till. Accordingly, the Authority is proposing for Stakeholders consultation, the following two proposals:

**Proposal No 20. Regarding UDF (CGF Service Providers as Concessionaires, i.e. ISPs or as Agents of BIAL)**

**20.a. Based on the material before it and its analysis, the Authority proposes**

**i. To put forth the following proposals for Stakeholders consultation:**

**1. Determination of Aeronautical tariffs (as well as UDF) considering the CGF Service providers as third party concessionaires (ISP, and not agents of BIAL). In this proposal, the Aeronautical Tariffs (as well as UDF) would be as per part A of Table 133 under Single Till. In this case, the Landing, Parking and Housing charges would be as per the revised rates proposed by BIAL and put forth for Stakeholders' Consultation vide Proposal No 17 above.**

**Alternatively,**

**2. Determination of Aeronautical tariffs (as well as UDF) considering the CGF Service providers as Agents of BIAL (and not as third party concessionaires). In this proposal, the**

**Aeronautical Tariffs (as well as UDF) would be as per part B of Table 133 under Single Till. In this case, the Landing, Parking and Housing charges would be as indicated in Table 133 and put forth for Stakeholders' Consultation.**

- ii. Based on the Stakeholders' consultation (including appropriate responses, if any, of BIAL) the Authority would determine the Aeronautical tariffs accordingly.**



## 28 Capital financing requirement for expansion and Means of Financing

28.1 The Authority notes that considering the other changes detailed in this document on the corrections proposed by the Authority, the resultant yield is computed in Para 23 above. The Authority has computed the fund requirement for meeting the debt obligations as well as the revised Capex funding pattern projected by the Model, reworked within the overall 70% gearing level (as submitted as possible by BIAL)

28.2 **Debt obligation requirements:** The Authority has first computed the requirement for repayment of principal instalment of debt, noting that the payment of interest is already factored in the calculation of WACC and hence is not to be separately accounted for. The internal resource generation is the summation of (a) Profit after tax (PAT), (b) Depreciation and (c) Deferred liabilities. These amounts are available with the airport operator for repayment of principal instalments of debt. Table 134 gives the details:

**Table 134 - Internal Resource Generation and its utilization – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
(A) PAT	128.18	98.10	92.19	14.53	114.89
(B) Depreciation and other Non-Cash adjustment	160.47	154.93	158.87	222.20	208.12
(C) Deferred Liabilities and other WC Changes	91.84	-90.42	-3.76	36.49	56.94
(D=A+B+C) Internal Resource Generation (IRG)	380.48	162.60	247.30	273.22	379.94
Application of IRG					
(E) Repayment of Principal amount of debt	183.66	188.01	194.32	305.36	308.86
(F) Cash Reserve to be maintained as per Loan Agreements	54.94	0.51	6.06	33.93	-2.01
(G=E+F) Total Fund Requirement for Debt Repayment plus Cash Reserve	238.60	188.52	200.38	339.29	306.84
(H=D-G) Surplus IRG for the year	141.88	-25.91	46.92	-66.07	73.10
(I) Opening Cash	434.49	282.94	253.04	101.32	12.21
(J=H+I) Cash available	576.37	257.03	299.96	35.25	85.31
Cash used for Financing Capital expansion	293.43	3.99	198.64	23.04	75.10
Closing Cash available	282.94	253.04	101.32	12.21	10.21

28.3 It is seen from the above table that the operations of the Airport under the proposals (including its proposal on Regulatory Till in Proposal No 19 above) made by the Authority with respect to various building blocks as well as the Regulatory till are adequate to meet debt repayment obligations.

28.4 **Capital for expansion:** The Authority has also calculated the fund requirement to support

expansion. The above table is prepared treating the service providers of the three aeronautical services of CGF as Third Party Concessionaires and as ISP (and not Agents of BIAL as claimed by it in its affidavit and position before AERAAT). Treatment of Service Providers of CGF (whether they be treated as ISPs or Agents of BIAL, and the financial implication thereof) is separately put forth for Stakeholders' consideration in Para 25 above). The implication of treating Services Providers of CGF as Agents of BIAL with respect to UDF, LPH etc is also indicated in Para 25 above and Table 129 and Table 130. Depending on the comments from the stakeholders, the Authority would determine Aeronautical tariffs and accordingly make appropriate calculations.

28.5 Apart from funds for repayment of debt, the Authority notes that the airport is undertaking substantial expansion. The fund requirement for expansion, as recomputed by the model, during current control period is Rs. 4027 Crore. The model presented by BIAL calculates the overall target debt to equity ratio at a maximum of 70:30. If this ratio is to be maintained throughout the current control period, the means of finance for the expansion is calculated as (a) Additional Equity infusion of Rs. 649 Crores (16%), (b) Internal Resource Generation at Rs. 594 Crores (15%) – Representing balance PAT after debt repayment obligations as well as cash reserve requirement as detailed in Table 134 and (c) the balance Rs. 2783 Crore (68%) as additional debt drawdown. Year wise break-up of Rs. 4027 Crores along with its means of finance is given in Table 135:

**Table 135: Recomputed Capital financing model based on the revised Yield – Rs. Crores**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Capex cost including Interest During Construction	293.43	802.60	780.15	539.32	1611.04
Means of Financing					
Debt	0.00	798.60	581.51	21.75	1381.06
Internal Resource Generation	293.43	3.99	198.64	23.04	75.10
Additional Equity Financing	0.00	0.00	0.00	494.52	154.88

28.6 The Authority notes that this equity requirement is computed by the model, based on the projected Equity and Debt balances at the end of each year, which may vary from the actual financials. The Authority also notes that BIAL has considered tax payments as expenditure in the model, which has not been considered as cost, in their financial statements upto 2012-13, due to the credit being available. The Authority notes that this will have an impact on the manner of computation of reserves, and thereby in computation of gearing which determined the funding gap to be bridged through Equity.

28.7 Hence if the shareholders were to bring in fresh equity to the extent of Rs. 649 Crores, this will support the additional capital need of Rs. 4027 Crores for expansion during the current control period. However BIAL has submitted that, in its Board meeting held on 6<sup>th</sup> September 2011, the Board has resolved that fresh equity from the promoters is not feasible. BIAL has stated in its

submissions dated 21<sup>st</sup> November 2012 that:

*“The shareholders have indicated, vide Board Minutes dated 6th September 2011 that no further Equity Infusion will be possible into the Airport and any scenario indicating Equity Infusion requires the matter to be brought back to the BIAL Board.”*

28.8 The Authority had requested for a certified copy of the Board resolution. BIAL informed on 3<sup>rd</sup> June 2013 that *“during the recent concluded Board Meeting, detailed discussion on AERA related issues have been recorded and the same is being finalised with the Chairman of the Board (the Chief Secretary of GoK) and the same will be forwarded”*. BIAL has further, vide e-mail dated 24<sup>th</sup> June 2013 submitted extract from Minutes of meeting of Board of Directors of BIAL on 16<sup>th</sup> May 2013 as follows:

*“Update on AERA Matter*

*Infusion of further equity into the Projects*

*The Board deliberated the matter further and asked Management to closely work with the Regulator to arrive at the Tariff and on the issue of infusion of further equity, the Board Members stated that none of the Promoters would be in a position to infuse further equity into the project.”*

28.9 The Authority has also carefully considered the various covenant of the Shareholders Agreement. The Authority has carefully considered clause 7.6 **“Subscription by State Promoters” paragraph (i) &(ii)**

28.10 According to Clause 7.6 (i) State promoters (in this case, the AAI and the KSIIDC shall cumulatively hold 26% of shares. The State promoters have decided to split this percentage half-half so that both AAI and KSIIDC have 13% of shareholding each. Further, should a capital call be made by the Board, both or at least one of the State promoter shall be entitled to fund the equity contribution of the capital call so made by the Board (including that of the defaulting State promoter). In that event, the additional equity contribution of both the State promoters falls short of the capital call, the private promoters may fund such equity contribution, however, it is indicated that they do not have any obligation to do so. Clause 7.6 (ii) states that the combined holding of the State promoters shall not be less than 26% of the total paid up share capital. It is also mentioned that KSIIDC shall contribute to such additional amounts to maintain the combined shareholding of 26% if the AAI’ equity cap is reached. The AAI’s equity cap is separately mentioned at Rs. 50 crores which has already been reached in the current shareholding of AAI in BIAL.

28.11 According to Clause 7.6 (ii), KSIIDC is obliged to contribute to additional share capital so as to maintain the combined shareholding of 26% by the State promoters. However, under Clause 7.6 (i), it is also mentioned that if one state promoter does not fund the equity contribution of the

defaulting state promoter, the private promoters may fund such equity contribution. The combined reading of these two provisions indicates that provided KSIIDC contributes to such additional amounts of equity, the occasion for the private promoter to fund the share of such equity contribution would never arise (with or without any obligation on the part of the private promoter so to do).

28.12 The combined reading of two sections could be interpreted to mean that in the event AAI is unable to contribute additional share capital on account of the equity cap being reached, KSIIDC is duty bound to contribute the additional amounts as required (taking the grammatical meaning of the word 'shall').

28.13 The Authority has also considered Clause 9.1 regarding Board of Directors and particularly the Board composition (under 9.1 (ii)). This clause prescribes the composition of the Board in the event of equity holding of state promoters falling below 26% of their entitlement. In view of what has been analysed in relation to clause 7.6 (i) and 7 (ii), it is not indicated as to the circumstances under which the equity holding of the state promoters jointly can fall below 26% because in the understanding of the Authority, KSIIDC is obliged to top up the shortfall. At any rate, during the first control period, the Authority considers it necessary that the shareholding percentage is between the band 20% to 26% so that the number of directors of state promoters is retained at 4. The Authority has also noted that the lower bound of this band is 20% for state promoters, however, taking into account the decision of the Board, the Authority for the current control period is reckoning the shareholding pattern of State promoters at 26% and private promoters at 74%.

28.14 BIAL, however, has also informed the Authority that no promoter (whether State or private) is in a position to contribute additional equity in the project as referred in Para 28.6 above. The Authority has considered the Shareholders' Agreement as well as the Board resolution. The Authority has also gone into the Clauses 9.4 regarding matters requiring consent of private promoter and state promoters regarding, inter alia, any change of the authorized share capital of the company, capital structure and issues of further capital except as provided in Clause 9.7 which deals with funding the Operating losses and change in law requiring a change in scope of Project.

28.15 In the current control period, in view of the immediate need for fresh capital for expansion needs of Bengaluru International Airport, the Authority does not propose to go into the issue of mutual impact of these different provisions on each other with respect to possibility or otherwise of infusion of additional share capital either by KSIIDC (under Clause 7.6 (i) of Shareholders' Agreement) or the private promoters (clause 7.6 (ii) of Shareholders' Agreement). Taking into account the submission of BIAL referring to the decision of the Board in its meeting referred to in Para 28.8 above that no further fresh capital is possible to be infused into the company, the Authority proposes to proceed for tariff determination assuming that additional equity capital may not be

forthcoming for the expansion during this control period.

28.16 The Authority therefore infers that, the Shareholders are unable to infuse additional equity. The Authority notes that under various other Airport Regulatory Policy regimens in the world, ensuring appropriate funding of an Airport dependant on mutual agreements of the Shareholders' is generally not regarded as a stated objective of the Regulator. For example, the Authority has noted the following:

*"...The matters to which the CAA must have regard under subsection (3) include:-*

- a) the need to secure that each licence holder is able to finance its provision of airport operation services (subsection (3)(a)). Whilst this should require the CAA to encourage efficient and economic investment by allowing a reasonable return over time, the financing duty does not require the CAA to ensure the financing of regulated airports in all circumstances, for example the CAA would not be required to adjust regulatory decisions in order to take account of an operator's particular financing arrangements or put the interests of users at risk by making them pay for an inefficient operator's financing decisions."*

*Para 36 of EXPLANATORY NOTES Civil Aviation Act 2012 Chapter 19*

28.17 It may be noted that the workings of Recomputed ARR under Single Till mechanism detailed in Table 123 are under the assumption that these additional fund requirements will be contributed by the Shareholders of the company as computed by the Model. BIAL is undertaking substantial expansion of the order of Rs. 4027 crores. The Authority does not consider it reasonable to assume that this order of expansion can be made without any additional Equity infusion by the Shareholders of BIAL and that the proposed capital expenditure of Rs. 4027 Crores is not possible to be met entirely by Debt. Assuming a 70:30 Debt : Equity Ratio, where Equity includes Retained Earnings, the Equity requirement is Rs. 649 Crores that in normal course would need to be funded by fresh equity. If the Shareholders of BIAL do not contribute to fresh equity infusion, this would result in a funding gap, the quantum of which would depend on the additional loan that BIAL can mobilise from the lenders. However, if additional debt is infeasible, BIAL would need to consider alternative financial instruments and arrangements that BIAL may like to avail of for this purpose.

28.18 The Authority has already analysed the various covenants of the Land Lease deed where it has been noted that land has been given by the GoK expressly stating as *"to improve the viability of the Project and enhance the bankability of the initial phase"*. Clause 4.2 of the Land Lease Agreement mentions, inter alia that *"improving the commercial viability of the project"* is one of the purposes of use of the Site. BIAL has however not so far given any proposal to the Authority to monetise or commercially exploit this land. BIAL has stated that *"in view of the business plan for real estate activities not being firmed up, real estate business scenario has not been considered in the*

*submissions*". The Authority expects that BIAL would make efforts to appropriately monetise these lands to generate adequate funds required for the expansion, as well as other appropriate alternate financial instruments.

**Proposal No 21. Regarding means of funding of expansion**

**21.a. Based on the material before it and its analysis, the Authority:**

- i. Notes the different components of means of finance for Capital requirement during the current control period for expansion as detailed in Table 135
- ii. Also notes that this includes an additional equity infusion requirement of Rs. 649 crores and its computation is based on this assumption.
- iii. Notes that BIAL has expressed its inability to bring in additional equity.
- iv. Notes that GoK (through KSIIDC) has *"agreed to provide financial support to improve the viability of the Project and enhance the bankability of the initial phase of the Project, and has also agreed to have KSIIDC provide the Site on lease to BIAL"* admeasuring about 4008 acres and that clause 4.2 of the Land Lease Deed mentions, inter alia that the Site can be used for purposes that are *"conducive or incidental to implementation of the Project"* or *"improving the commercial viability of the Project"* and that the *"Project"* is defined to mean *"the design financing, construction, completion, commissioning, maintenance, operation, management and development of the Airport"* both in Land Lease Deed as well as the Concession Agreement.
- v. Notes that BIAL has stated in its submission that it has not firmed up its Business Plan for real estate activities and accordingly, has not considered the Real Estate business scenario in their submissions.
- vi. Examine BIAL's proposals to generate (apart from additional debt) the requisite amount currently calculated at Rs. 649 crores with appropriate means that may include Additional Equity infusion by Shareholders, expeditiously firming up the Business plan for Land monetisation (after getting the necessary approvals as may be

required) etc. as well as other appropriate alternate financial instruments (Refer to Proposal 17.a.iv above)

- vii. Based on BIAL's concrete proposals in this regard and Authority's consideration thereof, the Aeronautical Tariffs (as well as UDF) will be suitably determined.

## 29 Matters relating to quality of service.

### a BIAL's Submission on Quality of service

29.1 BIAL has submitted the Objective and Subjective Measurement parameters as part of its Multi Year tariff proposal submission.

Additional Submissions made by BIAL regarding Order No. 13/ 2010-11, Order No. 14/ 2010-11 and Direction No. 5/ 2010-11, relating to Service Quality:

29.2 BIAL has submitted as follows

#### *19. Service Quality Parameters*

*Authority's Approach: In clause 12 of Order No.13 and clauses 6.11.3, 6.14, Appendices II, III and IV, the Authority has proposed to apply objective and subjective service quality parameters to the airport operator. The Authority has laid down service quality parameters and proposes to impose a penalty / rebate if the airport operators fail to keep up to the prescribed quality parameters. Appendix 2 to Direction No.5 contains objective service quality parameters such as maximum queuing time for Check-In, availability of baggage trolleys, parking bays, etc. Appendix 3 to Direction No.5 sets out the subjective service quality parameter, which is the rating on the ACI ASQ survey. Appendix 3 further sets out the criteria which are considered in arriving at the ACI ASQ survey which includes waiting time in check-in queue / line, availability of baggage carts / trolley, availability of parking facilities, value for money of parking facilities etc.*

*Observations: As per the AERA Act, only those service standards, which are set by the Central Government, can be implemented by the Authority. As per the Act, only those service quality standards that are set by the Central Government can be taken into account for determination of tariffs. Therefore, the Authority should not have proceeded to set service quality parameters, either objective or subjective. The Authority's proposals include penalizing the airport operator for non-compliance with service quality parameters, which hinges on regulating service quality and which is contrary to the mandates of Section 13 of the Act.*

*Additionally, a number of service quality prescriptions are dependent on the quality of service provided by third parties, over which the airport operator has little or no control. To illustrate, the first objective service quality parameter pertains to waiting time for security check. Security checking is undertaken by Central Industrial Security Force. The objective of the CISF personnel is to ensure safety of airport users / premises by thoroughly frisking passengers during the check in process. This frisking is also conducted*



*to ensure that there is no transportation of contraband or other impermissible articles. Therefore, the primary objective of the CISF personnel is not to ensure a quick turnaround time per passenger but to detect and prevent illegalities / unlawful activities. Thus, waiting time for security check is not a relevant factor for CISF personnel. In such circumstances, to impose on BIAL / airport operator conditions with respect to security check is unfair. Likewise, in the case of immigration check in waiting time, the primary objective of immigration department personnel is to screen passengers for appropriateness / legality of documents and baggage. And BIAL / airport operator has little or no control over officials who are in charge of immigration counters.*

*Additionally, there is a duplication of service quality standards in Appendix 2 and Appendix 3, such as, service quality standards with respect to waiting time in check-in queue / line, availability of baggage carts / trolley. Effectively, the airport operator is proposed to be penalized twice. To illustrate, if the airport operator is not able to meet the proposed service quality standard in relation to waiting time for check-in, the airport operator will suffer a penalty / rebate of 0.25% under Appendix 2 and the same will also be factored in for calculation of ASCI ASQ penalty / rebate of 2.5%.*

29.3 Also, if the airport operator incurs additional expenses that have not been forecast, the Authority has proposed that it shall not reimburse such additional expenses. In maintaining service quality, it is but likely that, due to changed circumstances, the extent and nature of expenses that may be incurred will change. Therefore, it would be unfair to treat expenses towards maintaining service quality as „controllable’ and not provide for reimbursement of the same.

*It is also observed that, whilst the Authority has proposed to separately determine tariffs for providers of cargo, ground handling and fuel farm services, quality parameters are imposed on the airport operator alone.*

*Submissions: It is submitted that the Authority need to reconsider its approach with respect to laying down service quality parameters, either subjective or objective. The Authority need not prescribe such parameters and may await standards that may be set by the Central Government. Without prejudice, the Authority need to treat expenses incurred for complying with subjective and objective service quality parameters as uncontrollable and provide error correction / truing up.*

#### **b Authority’s examination of BIAL’s Submission on Quality of service**

29.4 The Authority has carefully considered BIAL’s submission regarding the Service Quality Parameter. The Authority is required to, in terms of clause (d) of section 13(1), monitor the set performance standards relating to quality, continuity, and reliability of service as may be specified by

the Central Government or any Authority authorized by it in this behalf. Therefore, in the scheme of the Act, the Authority has two mandates relating to quality of service – first, to consider the quality of service for determination of tariff and secondly, to monitor the set performance standards relating to quality of service. These are two distinct functions - one relates to determination of tariff whereas another relates to monitoring of set performance standards. The framework of service quality provided for in the guidelines has been stipulated by the Authority for due discharge of its tariff determination function. At the consultation stage, BIAL had made a case that the concession agreement provides that penalties related to service quality are to be collected as liquidated damages and to be routed to airport development fund. It is noted that penalties by way of liquidated damages are contractual requirements of the concession agreement whereas fixation of tariffs commensurate with the quality of service is a statutory requirement. Therefore, the system of reducing the tariff in case of default in quality of service is a system which implements the mandate of the Act. In so far as the issue of incentive for quality of service more than those prescribed is concerned, the Authority states that airport planning is with reference to the level of service which the airport proposes to provide. The capital expenditure is also incurred accordingly. In case despite incurring the requisite capital expenditure, the airport operator is unable to provide the commensurate quality of service it is only fair that such operator is penalized by way of reduced tariff. However, if the operator is able to provide better quality of service with the same capital expenditure due to improved efficiency, this would be a welcome circumstance and the Authority believes that the Airport operator should strive for it. It would also be relevant to submit that during the Stakeholders' Consultation, the Government's view was not in favour of giving incentives for this purpose.

29.5 In the scheme of the AERA Act, the Authority has two mandates relating to quality of service – first, to consider the quality of service for determination of tariff and secondly, to monitor the set performance standards relating to quality of service. These are two distinct functions - one relates to determination of tariff whereas the other relates to monitoring of set performance standards.

29.6 The Authority in its Airport Order had ordered that while it will discharge its other functions under the AERA Act with respect to monitoring the set performance standards as may be specified by the Central Government (Section 13 (1) (d) of the AERA Act), it will, in accordance with the provisions of Section 13(1) (a) (ii) of the AERA Act, take into consideration the quality of service provided by Airport Operators on specified parameters and measures while determining tariffs.

29.7 The specific Objective Quality of Service Parameters and Benchmarks and the Subjective Quality of Service Parameters and Benchmarks to be measured at the major airports have already been adopted by the Authority in the Airport Guidelines (Appendix 2 and Appendix 3 of the Airport Guidelines).

29.8 In the Airport Guidelines, the Authority had also adopted a mechanism to consider reduced tariffs for under-performance vis-a-vis specified benchmarks on quality of service to adequately protect the interest of users. Under such a mechanism, the calculated level of rebate for a year will be passed on to users of airport services in the form of reduced tariffs in the following year(s). The Authority had specified that under-performance with respect to specified benchmark for each objective service quality measure will have a monthly rebate incidence of 0.25% of aeronautical revenue, subject to an overall cap of 1.5%. As regards the subjective service quality parameters the Authority had adopted an overall benchmark of 3.5 on the Airports Council International's Airport Service Quality (ACI ASQ) survey for subjective quality of service assessment to be undertaken by all major airports. The Authority believed that in order to progressively ensure better service quality performance within the control period, it would be appropriate to prescribe a higher overall benchmark for fourth and fifth years of the first control period. Accordingly it had decided that the overall benchmark for subjective quality requirements for the fourth and fifth year of the first control period shall be 3.75 on the ACIASQ survey.

29.9 The Authority has considered the issue of specifying a transition period for implementation of the scheme of quality of service measurement and determination of any rebates as relevant for BIAL and feels that a period of six months from the date of tariff determination would be a reasonable time for BIAL to appropriately align their processes/ procedures and make any other required interventions.

29.10 In the current determination of aeronautical tariff(s) for BIAL, a period of about two years and two months of the first control period have already elapsed and given the transition period of six months, for implementation of the above scheme (quality of service measurement and determination of any rebates) would be applicable at the earliest only from the fourth tariff year of the Control period i.e., 2014-15. The Authority notes that it will be possible to calculate the rebate for the year 2014-15 only in the tariff year t+2, viz., in 2016-17, which is the first tariff year of the next control period. In this light the Authority proposes to use the rebate mechanism as indicated in the Airport Order and the Airport Guidelines for BIAL.

**Proposal No 22. Regarding Quality of Service:**

**22.a. Based on the material before it and its analysis, the Authority proposes**

- i. To use the rebate mechanism as indicated in the Airport Order and the Airport Guidelines for Bengaluru International Airport.**
- ii. To implement the rebate scheme from 4<sup>th</sup> Tariff year of the Current Control period i.e., 2014-15. Rebate for year 2014-15 would be carried out in 2016-17, which is the first tariff year of the next control period**

## **30 Matters regarding Error Correction and Annual Compliance Statement**

### **(a) Authority's examination of Error Correction and Annual Compliance Statement**

30.1 The Authority had in its Airport Guidelines laid down the error correction mechanism with reference to the adjustment to the Estimated Maximum Allowed Yield per passenger, calculated using the error correction term of Tariff Year t-2 and the compounding factor. The error correction calculated as per the Airport Guidelines indicated the quantum of over-recovery or under-recovery due to increase or decrease respectively of the Actual Yield per passenger with respect to Actual Maximum Allowed Yield per passenger in the Tariff Year.

30.2 The Authority has noted that this is the first control period in which a period of over two years have already elapsed. Tariff being determined is to be recovered in the balance period of about two and half years of the current control period.

30.3 In the case of BIAL, the Authority has proposed to make appropriate adjustments to the RAB at the beginning of the next Control period in respect of actual investments. The Authority has also proposed to consider the depreciation calculated in accordance thereof and Roll Forward RAB during the Control Period for the purpose of determination of tariffs for aeronautical services at BIAL. The Authority has also proposed to true up the traffic projection based on actual growth. The Authority has also proposed that the non-aeronautical revenue and Operating Expenditure would be trued up, in the interest of the passengers as well as those of the airport operator. Hence, the truing up for non-aeronautical revenue and Operating Expenditure is also proposed after the completion of the current control period.

30.4 Further, the Authority also proposes that in view of all the corrections/truing up to be carried out at the end of the control period there may not be any requirement for BIAL to submit Annual Compliance Statements etc., as per the timelines indicated in the Airport Guidelines. Instead, BIAL should submit the Annual Compliance Statements along with the MYTP for the next Control Period.

### **Proposal No 23. Regarding Matters regarding Error Correction and Annual Compliance Statement**

#### **23.a. Based on the material before it and its analysis, the Authority proposes:**

- i. That BIAL should submit the Annual Compliance Statements for the individual tariff years of the first control period along with the MYTP for the next Control Period**

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## **32 Stakeholder Consultation Timeline**

32.1 In accordance with the provisions of Section 13(4) of the AERA Act 2008, the proposal contained in the Summary of Proposals (Para 31 above) read with the Authority's analysis, is hereby put forth for Stakeholder Consultation. To assist the stakeholders in making their submissions in a meaningful and constructive manner, necessary documents are enclosed (Annexure - I to VIII). For removal of doubts, it is clarified that the contents of this Consultation Paper may not be construed as any Order or Direction of this Authority. The Authority shall pass an Order, in the matter, only after considering the submissions of the stakeholders in response hereto and by making such decision fully documented and explained in terms of the provisions of the Act.

32.2 The Authority welcomes written evidence-based feedback, comments and suggestions from stakeholders on the proposal made in Para 31 above, **latest by 5<sup>th</sup> August 2013** at the following address:

**Capt. Kapil Chaudhary**  
**Secretary**  
**Airports Economic Regulatory Authority of India**  
**AERA Building,**  
**Administrative Complex,**  
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**Fax: 011-24695039**

**Yashwant S. Bhawe**  
**Chairperson**

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<a href="#"><u>Annexure II</u></a>	BIAL's Dual Till submission and additional submissions dated 14.09.2011, 21.11.2012, 08.04.2013, 15.04.2013, 16.04.2013
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